



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 25, 2018  
MAHS Docket No.: 17-014427  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR  
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 18, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent, with the Office of Inspector General. Respondent did not appear.

**ISSUES**

1. The first issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.
2. The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing Food Assistance Program (FAP) benefit recipient.
2. Respondent was clearly instructed of reporting requirements.
3. Due to illiteracy, disability, homelessness, and/or drug abuse, Respondent had limited understanding of reporting requirements.

4. Respondent committed and was convicted of multiple drug-related felonies between August 22, 1996, and August 2014.
5. From August 2014 through October 2016, Respondent received an OI of \$ [REDACTED] in FAP benefits.
6. On October 9, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from August 2014 through October 2016 due to an IPV.

### CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS' Hearing Summary and testimony alleged that Respondent received an OI of \$ [REDACTED] based on Respondent's history of drug-felony convictions. MDHHS made similar or identical allegations on an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated October 9, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), p. 1. An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. *Id.*, p. 2.

MDHHS presented a Register of Actions (Exhibit A, pp. 17-18) from a Michigan county court. Respondent's conviction for "Controlled Substances – Possession (narcotic or Cocaine) Less Than 25 Grams" dated [REDACTED], was listed. The crime is a felony under MCL 333.7403(2)(a)(v).

MDHHS presented a Register of Actions (Exhibit A, pp. 19-20) from a Michigan county court. Respondent's conviction for "Controlled Substance Delivery/manufacture

(narcotic or Cocaine) Less Than 50 Gr" dated [REDACTED], was listed. The crime is a felony under MCL 333.7401(2)(a)(iv).

Presented court documents did not list offense dates for each crime. Respondent's conviction dates were verified and sufficiently after August 22, 1996, that it is improbable that the corresponding offense dates occurred before August 22, 1996.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit A, pp. 57-61) from August 2014 through October 2016. FAP benefit issuances to Respondent totaled at least \$ [REDACTED]

Presented reporting documents and benefit issuance history were indicative that Respondent was the only member of the FAP benefit group throughout the alleged OI period. As the only group member, a disqualification of Respondent would justify a total disqualification of FAP benefit eligibility.

Respondent's friend testified that MDHHS has the burden to verify a person's eligibility before issuing FAP benefits; the testimony implied that Respondent should not be held accountable for the OI. The argument was not persuasive because MDHHS has no burden to verify a person's criminal history before issuing FAP benefits. Furthermore, MDHHS policy allows pursuit of OIs even when they are fault for the error (see BAM 700).

The evidence established Respondent was convicted of multiple drug-related felonies which would have disqualified Respondent from FAP eligibility during the alleged OI period. MDHHS established Respondent received at least \$ [REDACTED] in FAP benefits during the alleged OI period. It is found that Respondent received an OI of \$ [REDACTED] in FAP benefits. MDHHS alleged that the OI was caused by an IPV by Respondent.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[An IPV is a] benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. Bridges Program Glossary (October 2015), p. 36. A suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

BAM 720 (January 2016), p. 1; see also 7 CFR 273(e)(6).

IPV is suspected when there is **clear and convincing** [emphasis added] evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS presented Respondent's Redetermination for FAP benefits (Exhibit A, pp. 11-16). Respondent's handwritten signature was dated July 24, 2014. Respondent checked "No" a question asking, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" Respondent also checked "No" to the follow-up question asking if anyone was convicted more than once. (See Exhibit A, p. 15).

MDHHS presented Respondent's application for FAP benefits (Exhibit A, pp. 21-49). Respondent's electronic signature was dated June 16, 2015. Respondent answered "No" in response to the questions, "Convicted of a Drug Felony?" and "Convicted of a Drug Felony more than once?" (See Exhibit A, p. 25).

MDHHS presented Respondent's Redetermination for FAP benefits (Exhibit A, pp. 50-55). Respondent's handwritten signature was dated April 28, 2016. Respondent checked "No" a question asking, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" Respondent also checked "No" to the follow-up question asking if anyone was convicted more than once. (See Exhibit A, p. 54).

The presented reporting documents contained boilerplate language stating the client's signature was certification, subject to perjury, that all reported information on the document was true. The language tends to verify that Respondent was clearly instructed of reporting requirements.

MDHHS has policy to address misreporting. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Respondent presented evidence implying that he did not understand reporting requirements and/or he is not responsible for the written misreporting.

Respondent testified that he's been through "a lot" in his life; as an example, Respondent testified he recently underwent a heart procedure. Respondent also testified that he is illiterate and did not complete any of the reporting documents.

It was established that Respondent received Supplemental Security Income (SSI) throughout the OI period. SSI verifies disability. Respondent also reported an 8<sup>th</sup> grade

education, homelessness, and ongoing drug rehabilitation on the application dated June 16, 2015. Homelessness, disability, and an 8<sup>th</sup> grade education, and drug rehabilitation are not verification of illiteracy, but they are often consequences of illiteracy and/or an inability to understand reporting requirements. Respondent further testified that someone else completed each of the documents containing a written misreporting.

MDHHS alleged that Respondent's impairment was physical because a document from their database said so (see Exhibit A, p. 62). The document is not deemed to be reliable because MDHHS provided no basis for concluding that Petitioner's disability is solely physical-based.

Respondent presented enough evidence to merit finding that he did not complete reporting documents and/or that he did not understand reporting requirements. Based on a clear and convincing standard, it is found that MDHHS did not establish that Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV, [and] lifetime for the third IPV. *Id.*

MDHHS sought to impose a one-year IPV disqualification against Respondent. Based on the finding that Respondent did not commit an IPV, an IPV disqualification cannot follow. Respondent should be advised that the finding that he cannot be disqualified for an IPV does not change his FAP ineligibility concerning previous drug felonies.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received \$ [REDACTED] in over-issued FAP benefits for the period from August 2014 through October 2016. The MDHHS request to establish an overissuance against Respondent is **APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV related to \$ [REDACTED] in over-issued FAP benefits for the period from August 2014 through October 2016. The MDHHS request to establish an IPV is **DENIED**.

CG/



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**Christian Gardocki**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]