



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.: 17-015274
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 instructed of reporting requirements.
3. During all relevant times, Respondent had no apparent impairment to understanding reporting requirements.

4. Respondent committed and was convicted of multiple drug-related felonies between August 22, 1996, and August 2015.
5. From August 2015 through November 2016, Respondent received an OI of \$ [REDACTED] in FAP benefits.
6. Respondent did not clearly and convincingly misreport a history of drug felonies which led to an OI of FAP benefits.
7. On October 24, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from August 2015 through November 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] in FAP benefits based on Respondent's history of drug felony convictions. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated October 24, 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. 64-65) from a Michigan county court. The document stated that Respondent was convicted of "Controlled Substance - Delivery/manufacture (narcotic or Cocaine) Less Than 50 Gr" on [REDACTED]. An offense date was not listed. The crime is a felony under MCL 333.7401(2)(a)(iv).

MDHHS presented a Register of Actions (Exhibit A, pp. 66-67) from a Michigan county court. The document stated that Respondent was convicted of "Controlled Substance - Delivery/manufacture (narcotic or Cocaine) Less Than 25 Grams" on [REDACTED]. An offense date was not listed. The crime is a felony under MCL 333.7403(2)(a)(v).

The evidence established that Respondent was convicted of multiple controlled-substance felonies between August 22, 1996, and March 2015. Offense dates were not verified but Respondent's conviction dates were 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. 68-70) from August 2015 through November 2016. FAP benefit issuances to Respondent totaled \$ [REDACTED]

Presented reporting documents and Respondent's 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.

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 \$ [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 application for FAP benefits (Exhibit A, pp. 10-34). Respondent's electronic signature was dated July 31, 2015. The application did not ask if Respondent was convicted of a drug felony.

MDHHS presented Respondent's application for FAP benefits (Exhibit A, pp. 35-63). Respondent's electronic signature was dated December 16, 2016. Respondent answered "No" in response to the question, "Convicted of a Drug Felony?" Respondent also answered "No" in response to a question asking, "Convicted of a Drug Felony more than once?" (See Exhibit A, p. 39).

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. MDHHS alleged that Respondent's misreporting justified imposing an IPV.

Respondent's application dated July 31, 2015, at most, established that Respondent did not answer a question about drug felonies. MDHHS alleged that Respondent purposely did not answer the online question knowing that answering truthfully would disqualify him from receiving FAP benefits. MDHHS' allegation may be true though it is just as possible that Respondent overlooked the question. It is notable that MDHHS could have (but did not) delayed the processing of Respondent's application until Respondent answered the question about drug felonies.

Respondent's latter application verified misreporting by Respondent. The application was dated after the alleged OI period so it cannot be concluded that the misreporting caused an OI. Respondent's misreporting could be construed as evidence that he purposely failed to report drug felonies earlier; however, Respondent's intent from December 2016 is not particularly insightful of his intent from over one year earlier. Based on the evidence, it is found MDHHS did not clearly and convincingly 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.*

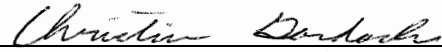
It was already found that Respondent did not commit an IPV. Without establishment of an IPV, MDHHS may not impose an IPV disqualification.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established an OI of \$ [REDACTED] in over-issued FAP benefits for the period from August 2015 through November 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 receipt of \$ [REDACTED] in over-issued FAP benefits for the period from August 2015 through November 2016. The MDHHS request to establish an IPV is **DENIED**.

CG/



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]
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