



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: June 4, 2018
MAHS Docket No.: 17-013414
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 30, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Mark Mandreky, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUE

The issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

FINDINGS OF FACT

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

1. On February 23, 2009, Respondent was convicted of a controlled-substance felony under MCL 333.7401(2)(d)(iii). (Exhibit A, p. 19)
2. On April 3, 2015, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate application language informed Respondent to report changes to MDHHS within 10 days. Respondent reported having zero drug-felony convictions. (Exhibit A, pp. 23-52)

3. On June 23, 2015, Respondent signed a Redetermination which was subsequently submitted to MDHHS. Respondent did not answer questions asking about past drug-felony convictions. (Exhibit A, pp. 53-58)
4. From July 2015 through May 2016, Respondent received ongoing FAP benefits of \$ [REDACTED] per month, except for April 2016 in which he received only \$ [REDACTED] in FAP benefits. (Exhibit A, p. 22)
5. From September 16, 2015, through March 31, 2016, Respondent was incarcerated. (Exhibit A, p. 15)
6. From September 21, 2015, through May 14, 2016, \$ [REDACTED] was spent on Respondent's Electronic Benefits Transfer (EBT) card (Exhibit A, pp. 20-21). Specific food items purchased included milk, onions, apples, bananas, and other perishable items (Exhibit A, pp. 65-75). During the period, Respondent did not have an authorized FAP representative.
7. On [REDACTED], 2015, Respondent was convicted of a controlled-substance felony under MCL 333.7403(2)(a)(v). (Exhibit A, p. 16)
8. On [REDACTED] 2016, Respondent was convicted of a controlled-substance felony under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 17-18)
9. On June 28, 2016, MDHHS received Respondent's Redetermination for FAP benefits. Respondent did not answer questions asking about past drug-felony convictions. (Exhibit A, pp. 59-64)
10. On August 29, 2017, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from September 2015 through May 2016 due to an IPV. MDHHS also requested a hearing to impose an IPV disqualification of one year against Respondent; the stated reasons for disqualification included past drug-felony convictions and FAP trafficking.
11. On April 30, 2018, and during an administrative hearing, MDHHS verbally withdrew their request for an IPV disqualification against Respondent.

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 committed an IPV justifying a one-year IPV disqualification against Respondent. During the hearing, MDHHS withdrew their request to establish an IPV against Respondent. MDHHS' hearing request will be dismissed concerning their request to establish an IPV disqualification.

MDHHS' Hearing Summary and testimony also alleged that Respondent received an OI of \$[REDACTED] in FAP benefits. MDHHS contended that the OI was justified based on Respondent's FAP trafficking and/or FAP benefit ineligibility from previous drug-related felonies. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp 6-7) dated August 29, 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.* For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *Id.*, pp. 1-2.

OVERISSUANCE BASED ON FAP TRAFFICKING

MDHHS contended that Respondent received an OI by trafficking FAP benefits. To establish an OI based on FAP trafficking, MDHHS must first establish that Respondent trafficked FAP benefits.

For FAP benefits an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 2016), p. 1. MDHHS policy goes on to list various scenarios which are considered FAP trafficking; the applicable scenario states that FAP trafficking is established by the "buying, selling or stealing of FAP benefits for cash or consideration other than eligible food". BAM 700 (January 2016), p. 2.

The evidence established that Respondent was incarcerated from September 16, 2015, through March 31, 2016, and that Respondent's EBT card was used throughout his incarceration. Presumably, Respondent did not personally use his EBT card while incarcerated. It can further be inferred that a person not authorized by Respondent had access to Respondent's EBT card and personal identification number (PIN). MDHHS contended the circumstances were clear and convincing evidence of trafficking by Respondent.

Notably, "cash or consideration" in exchange for FAP benefits is required to establish trafficking. "Consideration" is a legal term generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires MDHHS to establish that Respondent received something of value for use of EBT card. It cannot be assumed that Respondent received "cash or

consideration” merely because he appeared to allow someone outside of his FAP benefit group to use his EBT card.

A finding that an OI was not established by the presented evidence is bolstered by a policy interpretation by the federal agency in charge of FAP benefit regulations. MDHHS acknowledged that since MDHHS requested a hearing, the Food and Nutrition Service informed MDHHS that the cash or consideration required of FAP trafficking cannot be established merely from use of an EBT card during a person’s incarceration.

MDHHS contended that purchases of perishable food items (e.g. fruits, milk...) during Respondent’s incarceration render it improbable that the items purchased with Respondent’s EBT card were saved for Respondent. The MDHHS contention is reasonable, however, this evidence does not directly address whether Respondent received cash or consideration for use of his EBT card. It is found that MDHHS failed to establish an OI based on FAP trafficking.

OVERISSUANCE BASED ON DRUG FELONIES

MDHHS also contended that Respondent received an OI of FAP benefits because of Respondent’s past drug felonies. MDHHS provided Respondent with notice of the contention within their Hearing Summary and an Intentional Program Violation Repayment Agreement.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), 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.

The evidence established that Respondent was convicted of multiple controlled-substance felonies as of December 14, 2015. Respondent’s multiple convictions for controlled substance felonies would have disqualified him from receipt of FAP benefits beginning January 2016. Respondent’s FAP issuance history verified that Respondent received a total of \$ [REDACTED] in FAP benefits from January 2016 through the end of the alleged OI period; thus, MDHHS established a basis of an OI of \$ [REDACTED] MDHHS did not establish a basis for an OI for the remaining \$ [REDACTED] of the alleged OI from before January 2016.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS withdrew their request to establish that Respondent committed an IPV justifying an IPV disqualification. The request to establish an IPV disqualification against Respondent is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of \$ [REDACTED] in FAP benefits for the period from January 2016 through May 2016. The MDHHS' request to establish an \$ [REDACTED] 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 received an OI of \$ [REDACTED] in FAP benefits for the period from September 2015 through December 2015. The MDHHS request to establish an \$ [REDACTED] overissuance against Respondent 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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED]
[REDACTED] MI [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS