



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: July 5, 2018  
MAHS Docket No.: 17-016722  
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 July 2, 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 Joseph Lalli, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

The hearing notice sent to Respondent was returned as undeliverable. The hearing proceeded under 7 CFR 273.16(e)(3)(i) as there was no known better address for Respondent.

**ISSUES**

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

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification against Respondent.

**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 FAP benefit recipient.
2. From November 2015 through April 2016, Respondent received \$ [REDACTED]/month in FAP benefits. (Exhibit A, p. 15)
3. From November 5, 2015, through September 8, 2016, Respondent was incarcerated. (Exhibit A, p. 11)
4. During Respondent's incarceration, various food purchases totaling \$ [REDACTED] were made using Respondent's Electronic Benefits Transfer (EBT) card. (Exhibit A, pp. 12-14)
5. On December 1, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from November 2015 through April 2016. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period. (Exhibit A, p. 1)
6. As of the date of hearing, Respondent had no known previous IPV disqualifications.

### **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 period of incarceration. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) 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. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2. A person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (July 2014) p. 1.

MDHHS presented an affidavit from Respondent (Exhibit A, p. 11). Respondent's statement acknowledged that he was incarcerated from [REDACTED] 2015, through [REDACTED] 2016. No presented evidence indicated otherwise. Based on the evidence, Respondent's statement concerning incarceration is accepted as factual.

MDHHS began the OI period with November 2015. Respondent did not become incarcerated until the 5<sup>th</sup> of November. Respondent should be eligible for November 2015 FAP benefits either because he was not incarcerated the beginning of the month and/or because a reporting of incarceration could not have affected Respondent's FAP eligibility. Thus, MDHHS improperly included November 2015 as part of the OI period. MDHHS will be denied an OI of \$ [REDACTED] the amount of FAP benefits received by Respondent in November 2015.

Based on Respondent's incarceration period, Respondent was not eligible to receive FAP benefits beginning December 2015. MDHHS established that Respondent received \$ [REDACTED] in FAP benefits from December 2015 through April 2016. Thus, MDHHS established an OI of \$ [REDACTED] from December 2015 through April 2016. MDHHS also requested a hearing to establish that the OI was caused by an IPV.

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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2016), p. 11. Non-income changes, such as address or incarceration, must be reported within 10 days after the client is aware of them. *Id.*, p. 12.

It has already been established that Respondent received an overissuance of \$ [REDACTED]. The OI was consistent with Respondent's failure to report incarceration to MDHHS; Respondent presented no evidence claiming otherwise. Given the evidence, Respondent did not timely report incarceration to MDHHS which caused an OI. For an IPV, MDHHS must also establish that Respondent's failure to report was clearly and convincingly intentional.

While Respondent was incarcerated, Respondent's EBT card was used by a person outside of Respondent's FAP group. The EBT card usage is consistent with Respondent providing someone with his personal identification number and allowing such usage. Such allowance is consistent with an intentional failure to report incarceration.

It is found that MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.

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 did not allege Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS did not establish an OI of \$ [REDACTED] for November 2015. It is further found that MDHHS established that Respondent received an OI of \$ [REDACTED] in FAP benefits from December 2015 through April 2016. The MDHHS request to establish an OI against Respondent is **PARTIALLY APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on Respondent's failure to timely report incarceration. The MDHHS request to establish a disqualification period of one year against Respondent is **APPROVED**.

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) 763-0155; 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**

Clarence Collins  
MDHHS-Wayne-55-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
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M Shumaker  
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