



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: July 3, 2018  
MAHS Docket No.: 18-000704  
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 Kelvin Christian, 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. On [REDACTED] 2002, Respondent was convicted of "Possession (narcotic or Cocaine) Less Than 25 Gr" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 32-33)
2. On [REDACTED] 2006, Respondent was convicted of "Possession (narcotic or Cocaine) Less Than 25 Gr" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 34-36)
3. On September 21, 2016, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent did not answer questions asking if he was convicted of a drug felony and if he was convicted of a drug felony more than once. (Exhibit A, pp. 10-31)
4. From September 2016 through February 2017, Respondent received a total of \$[REDACTED] in FAP benefits. (Exhibit A, p. 37.) Respondent's eligibility was based on a 1-person FAP group.
5. On January 25, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from September 2016 through February 2017 and to establish an IPV disqualification of one year against Respondent. (Exhibit A, p. 1)

### **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) 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 an

MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

For FAP benefits, people convicted of certain crimes and probation or parole violators are not eligible for assistance. 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. BEM 203 (October 2015), pp. 1-2

MDHHS presented court documents which verified that Respondent was convicted of multiple crimes involving controlled substances. The court documents listed statutes corresponding to the crimes for which Respondent was convicted; each controlled substance crime for which Respondent was convicted is a felony under Michigan law. Offense dates were not verified, but Respondent's conviction dates were sufficiently after August 22, 1996, that it can be inferred that the corresponding offense dates also occurred after August 22, 1996.

Respondent's FAP issuance history listed that Respondent received \$[REDACTED] in FAP benefits from the OI period. Presented documentation sufficiently verified that Respondent was the only group member during that time. 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 further alleged that the OI was caused by an IPV by Respondent.

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 no evidence of misreporting by Respondent. MDHHS alleged that Respondent's failure to answer questions about drug felony history on an application dated September 21, 2016, was evidence of an intentional failure to report. If Respondent's non-answers to application questions were concerning, then MDHHS should have had Respondent answer the application questions before approving Respondent's FAP eligibility. Respondent's non-answers to questions about drug felonies is not clear and convincing evidence that Respondent intentionally failed to report drug felonies to obtaining benefits he was not entitled to receive. Thus, it is found that Respondent did not commit 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.*


Without a finding that a client committed an IPV, an IPV disqualification cannot follow. MDHHS will be denied their request to establish a one-year disqualification against Respondent.

### DECISION AND ORDER

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 justifying a one-year period of disqualification. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

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 September 2016 through February 2017. The MDHHS requests to establish an overissuance 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  
Policy Recoupment  
C Gardocki  
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