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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 24, 2018
MAHS Docket No.: 18-002254
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 scheduled for July 23, 2018, from Detroit, Michigan. Maria Williams, regulation agent with the Office of Inspector General, represented MDHHS. Amber Johnson, regulation agent with the Office of Inspector General, observed the hearing. Respondent appeared and was unrepresented.

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 ██████████ 2003, Respondent was convicted of "POSS/CS U/25 GRAMS" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 22-23)
2. On ██████████, 2003, Respondent was convicted of "POSS/CS U/25 GRAMS" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 24-25)

3. On March 6, 2014, Respondent submitted to MDHHS a Redetermination for Food Assistance Program (FAP) benefits. Respondent answered “No” in response to questions asking if anyone was convicted of a drug felony since August 22, 1996, and if anyone was convicted of a drug felony more than once. Respondent signed the document though Respondent’s use of an authorized representative was indicated. (Exhibit A, pp. 12-15)
4. On April 30, 2015, Respondent submitted to MDHHS a Redetermination for Food Assistance Program (FAP) benefits. Respondent answered “No” in response to questions asking if anyone was convicted of a drug felony since August 22, 1996, and if anyone was convicted of a drug felony more than once. Respondent signed the document though Respondent’s use of an authorized representative was indicated. (Exhibit A, pp. 16-21)
5. From April 2014 through March 2016, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 28-32) Respondent’s eligibility was based on a two-person FAP group.
6. On November 16, 2017, MDHHS determined that Respondent received \$ [REDACTED] in over-issued FAP benefits based on Respondent being an ineligible group member due to previous drug felony convictions. (Exhibit A, pp. 33-80)
7. On March 9, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from April 2014 through March 2016 and to establish an IPV disqualification of one year against Respondent. (Exhibit A, p. 1)
8. As of the date of hearing, Respondent had no known previous IPV disqualifications.
9. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements (see Exhibit A, p. 81).

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. 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 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.

MDHHS alleged a FAP-OI period from April 2014 through March 2016. Documentation from MDHHS' database verified that Respondent received FAP benefits from April 2014 through March 2016 totaling \$██████. Presented OI budgets recalculated Respondent's FAP eligibility by factoring Respondent as a disqualified group member. The result was that all benefits received by Respondent from the OI period were over-issued.

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 that Respondent received \$██████ in FAP benefits during the alleged OI period but was eligible to receive \$0. Thus, Respondent received an OI of \$██████ in FAP benefits. MDHHS alleged that the OI was caused by Respondent's 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).

MDHHS presented two Redeterminations signed by Respondent. Respondent signed one Redetermination in the month before the OI period. Respondent signed the second Redetermination in the middle of the Redetermination. On both Redeterminations, Respondent's answers to questions about past drug felonies misreported a history of drug-felony convictions. Boilerplate language on MDHHS reporting documents states that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8).

Respondent testified that he was injured in 2008 and that he's had physical and cognitive difficulties since, including reading at an elementary school level. Respondent also testified that a hospital completed one of the Redeterminations at issue and that a family member completed the other. Respondent's testimony implied that he did not commit an IPV because someone else misreported Respondent's drug felonies.

Respondent established that he had an authorized representative (his mother) for his FAP case. An authorized representative is someone who receives an Electronic Benefit Transfer Card which allows the representative to spend a client's FAP benefits. Respondent's use of an authorized representative is somewhat consistent with a claim that Respondent did not complete the Redeterminations at issue. Use of an authorized representative really only verifies that Respondent wanted his mother to have access to his FAP benefits but is not very insightful as to why.

It was not disputed that Respondent was deemed disabled by the Social Security Administration. MDHHS recorded Respondent's disability as a physical one, though MDHHS acknowledged that Respondent could also be impaired mentally. Respondent did not present any medical records verifying a need for someone to complete reporting documents. Respondent also did not present testimony from the family member who allegedly completed one of the Redeterminations.

Most notably, Respondent signed both Redeterminations. If Respondent did not complete the Redeterminations, it would be expected that the person signed the documents as Respondent's authorized representative. It is found that Respondent completed the Redeterminations at issue.

As Respondent completed both Redeterminations and presented insufficient evidence that he failed to understand his clear and correct obligation to report information truthfully, it is found 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. 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. BAM 725 (January 2016), p. 16.

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 established that Respondent committed an IPV based on receipt of \$ [REDACTED] in over-issued FAP benefits for the period from April 2014 through March 2016. The MDHHS requests to establish an overissuance and a disqualification period of one year against Respondent are **APPROVED**.

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) 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

Petitioner

MDHHS-OIG-Hearings

DHHS

Randa Chenault
MDHHS-Oakland-3-Hearings

Respondent

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M Shumaker
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