



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: July 17, 2018
MAHS Docket No.: 18-003618
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 July 12, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Brda, regulation agent, with the Office of Inspector General. Respondent appeared and was unrepresented. ██████████, Respondent's mother, testified on behalf of 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 ██████████ 2000, Respondent was convicted of "Controlled Substances – Possession (narcotic or Cocaine) Less Than 25 Grams" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 57-58)

2. On [REDACTED], 2003, Respondent was convicted of "POSS/CS U/25 GRAMS" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 59-63)
3. As of February 14, 2012, and through April 2017, Respondent believed that his drug felony conviction from 2000 was expunged.
4. On February 14, 2012, Respondent submitted to MDHHS a Redetermination concerning Food Assistance Program (FAP) benefits. Respondent answered "Yes" in response to a question asking if he was convicted of a drug felony since August 22, 1996. Respondent answered "No" in response to a question asking if he was convicted of a drug felony more than once. (Exhibit A, pp. 12-15)
5. On or near March 8, 2013, Respondent submitted to MDHHS a Redetermination concerning FAP benefits. Respondent answered "Yes" in response to a question asking if he was convicted of a drug felony since August 22, 1996. Respondent answered "No" in response to a question asking if he was convicted of a drug felony more than once. (Exhibit A, pp. 16-19)
6. On January 4, 2017, Respondent submitted to MDHHS an application requesting FAP benefits. Respondent answered "Yes" in response to a question asking if he was convicted of a drug felony since August 22, 1996. Respondent answered "No" in response to a question asking if he was convicted of a drug felony more than once. (Exhibit A, pp. 20-55)
7. From March 2012 through December 2013, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 66-69) Respondent's eligibility was based on a one-person FAP group.
8. From January 2017 through April 2017, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, p. 65) Respondent's eligibility was based on a one-person FAP group.
9. On April 5, 2018, MDHHS requested a hearing to establish that Respondent received OIs of FAP benefits of \$ [REDACTED] from March 2012 through December 2013 and \$ [REDACTED] from January 2017 through April 2017. MDHHS also requested 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 a total 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. The same policy was in place as of March 2012.

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 total FAP-OI period from March 2012 through April 2017. Documentation from MDHHS' database verified that Respondent received FAP benefits totaling \$ [REDACTED] during the alleged 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 disqualified Respondent from FAP eligibility during the alleged OI period. MDHHS established Respondent received a total of \$ [REDACTED] in FAP benefits during the alleged OI periods. Thus, MDHHS establish an OI of \$ [REDACTED] against Respondent. MDHHS further alleged 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 Child Development and Care (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 multiple documents in which Respondent reported that he was convicted of only one drug felony since 1996. Respondent's documents verified that Respondent misreported his 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). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an intent required to establish IPV. Respondent rebutted the generality with credible testimony concerning his intent.

Respondent testified that his defense attorney from the 2000 conviction told Respondent that the conviction would be expunged. Respondent testified that he and his mother made several recent efforts to verify that the 2000 conviction was expunged, though he eventually learned that it was not because of his subsequent conviction. Respondent's testimony was consistent with his mother's testimony.

Though Respondent was mistaken in believing that his conviction from 2000 was expunged, Respondent sincerely believed he had only one countable drug felony conviction. Respondent's sincere but mistaken belief does not alter that he misreported information to MDHHS, but it is supportive in finding that he did not intend to misreport information. Based on the evidence, it is found that Respondent did not intend to misreport to MDHHS his history of drug felonies. Without a finding that Respondent lacked the intent to commit an IPV, an IPV cannot follow.

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 has already been found that Respondent did not commit an IPV. Without an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied their request to establish a one-year disqualification period against Respondent. It should be noted that denial of an IPV does not affect Respondent's lack of FAP eligibility due to multiple drug felony convictions.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received OIs of FAP benefits of \$█████ from March 2012 through December 2013 and \$█████ from January 2017 through April 2017. 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 justifying a one-year period of disqualification. The MDHHS request to establish an IPV disqualification 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) 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

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS