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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 16, 2018
MAHS Docket No.: 18-004274
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 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 Julie Brda, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

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 ██████████ 1998, Respondent was convicted of "Controlled Substances – Possession (narcotic or Cocaine) Less Than 25 Grams" under MCL 333.7403(2)(a)(v). (Exhibit A, pp. 41-42)

2. On [REDACTED] 2010, Respondent was convicted of “DELIVERY/MANUFACTURE MARJ.” under MCL 333.7401(2)(d)(iii). (Exhibit A, pp. 43-45)
3. On March 5, 2017, Respondent submitted to MDHHS an electronic application for Food Assistance Program (FAP) benefits. Respondent reported having multiple drug felonies. (Exhibit A, pp. 10-39)
4. On March 14, 2017, an MDHHS specialist interviewed Respondent concerning his FAP application. The specialist documented that Respondent verbally reported that he erroneously reported on his application having multiple drug felonies and that he actually only has one felony. Respondent’s specialist also documented that Respondent’s FAP eligibility would be approved based on Respondent’s verbal statement. (Exhibit A, p. 40)
5. During all relevant times, Respondent had no impairment to understanding or fulfilling reporting requirements.
6. From March 2017 through May 2017, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, p. 46) Respondent’s FAP eligibility was based on a one-person FAP group.
7. On April 19, 2018, MDHHS requested a hearing to establish that Respondent received \$ [REDACTED] in over-issued FAP benefits from March 2017 through May 2017. MDHHS also requested establishment of 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.

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 \$ [REDACTED] in over-issued 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

Presented court documents 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 March 2017 through May 2017. Respondent's FAP issuance history 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 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. Thus, MDHHS established an overissuance 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 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).

Respondent's FAP application dated March 5, 2017, accurately reported that Respondent had multiple drug felonies. Generally, an accurate written reporting is consistent with no intent to misreport. The present case is an exception.

A MDHHS specialist documented that Respondent was interviewed shortly after he applied for FAP benefits. During the interview, Respondent verbally reported that he had but one drug felony since 1996 and that he erroneously reported having multiple felonies. The specialist took Respondent at his word and activated Petitioner's FAP eligibility. Respondent's inaccurate verbal statement trumped his accurate written reporting as it appeared to be made with a purposeful intent to misreport his drug felony history.

It is found 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 established that Respondent committed an IPV based on receipt of \$ [REDACTED] in over-issued FAP benefits from March 2017 through May 2017. 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

DHHS

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS