



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: August 7, 2018  
MAHS Docket No.: 18-003594  
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 scheduled for August 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 James Linaras, 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 [REDACTED] 2001, a man later reported by Respondent as her spouse (hereinafter, "Spouse") was convicted of "CON SUB-DEL/MANU LESS 50

GRAMS” under MCL 333.7401(2)(a)(iv). The corresponding offense date was [REDACTED], 2001. (Exhibit A, pp. 12-14)

2. On [REDACTED] 2002, Spouse was convicted of “POSS SUB 225-649 GRAMS” under MCL 333.7403(2)(a)(ii). The corresponding offense date was [REDACTED] 2001. (Exhibit A, pp. 15-22)
3. On April 21, 2016, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Spouse was reported as a household member. Respondent answered “No” in response to questions asking if Spouse was convicted of a drug felony and if Spouse was convicted of a drug felony more than once. (Exhibit A, pp. 23-54)
4. From April 2016 through March 2017, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 55-58.)
5. On April 3, 2018, MDHHS calculated Respondent received an OI of \$ [REDACTED] in FAP benefits from April 2016 through March 2017 due to Spouse’s wrongful inclusion in Petitioner’s FAP eligibility. The OI was based on “actual” issuances totaling \$ [REDACTED] and “correct” issuances totaling \$ [REDACTED] (Exhibit A, pp. 61-94)
6. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements.
7. On April 5, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from April 2016 through March 2017 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.

### **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 Spouse’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 Spouse 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. All corresponding offense dates were after August 22, 1996.

MDHHS alleged a FAP-OI period from April 2016 through March 2017. Documentation from MDHHS' database verified that Respondent received FAP benefits from April 2016 through March 2017 totaling \$██████. Respondent's correct total issuance would require calculation of FAP eligibility with Spouse as a disqualified member. Presented budgets calculated that Respondent should have only received a total "correct" issuance of \$██████ from the alleged OI period. Subtracting Respondent's correct FAP issuance from the actual issuance results in an OI of \$██████.

The evidence established Spouse was convicted of multiple drug-related felonies which would have disqualified Spouse from FAP eligibility during the alleged OI period. MDHHS established Respondent received \$██████ in over-issued FAP benefits during the OI period as a result of Spouse being improperly counted in Respondent's FAP group. It is found that Respondent received an OI of \$██████ 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 an application completed by Respondent from the beginning of the OI period. Respondent's answers to questions about Spouse's past drug felonies verified that Respondent misreported Spouse's 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.

The evidence established that Respondent misreported information in writing to MDHHS by claiming Spouse's absence of drug-felony convictions. Respondent's misreporting directly led to an OI of benefits. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an intent to commit an IPV; Evidence was not presented to rebut the generality.

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

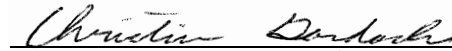
The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV ... one year for the first IPV ... two years for the 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 for the period from April 2016 through March 2017. The MDHHS requests to establish an overissuance and a disqualification period of one year against Respondent are **APPROVED**.

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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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

Tara Roland 82-17  
MDHHS-Wayne-17-Hearings

**Respondent**

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

M Shumaker  
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MAHS