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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: November 21, 2018
MAHS Docket No.: 18-007209
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 November 1, 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 Derrick Gentry, 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] 2012, Respondent was convicted of "Controlled Substance-Delivery manufacture (narcotic or Cocaine) Less Than 50 Gr (Attempt)" under MCL 333.7401(2)(a)(iv). (Exhibit A, pp. 11-12.)

2. On [REDACTED] 2013, Respondent was convicted of “Controlled Substance-Delivery manufacture (narcotic or Cocaine) Less Than 50 Gr” under MCL 333.7401(2)(a)(iv). (Exhibit A, pp. 13-15.)
3. On [REDACTED] 2016, Respondent was convicted of “Controlled Substance-Delivery manufacture (narcotic or Cocaine) Less Than 50 Gr” under MCL 333.7401(2)(a)(iv). (Exhibit A, pp. 16-17.)
4. On May 2, 2017, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent was the only reported household member. Respondent answered “No” in response to questions asking if he was convicted of a drug felony or convicted of multiple drug felonies. Boilerplate language stated that Respondent’s signature was certification, under penalties of perjury, that all reported information was accurate. (Exhibit A, pp. 18-48.)
5. From May 2017 through August 2017, Respondent received \$[REDACTED] in FAP benefits. Exhibit A, p. 49. Respondent’s eligibility was based on a 1-person FAP group.
6. On July 10, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from May 2017 through August 2017. (Exhibit A, pp. 1-2.) MDHHS also requested a hearing to establish a 1-year IPV disqualification period against Respondent. *Id.*
7. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements.
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 totaling \$[REDACTED] in FAP benefits based on Respondent’s past 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. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.* Federal regulations refer to overissuances as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a).

Federal regulations allow states to disqualify person convicted of multiple drug felonies. 7 CFR 273.11(m). FAP ineligibility is only limited to convictions based on behavior which occurred after August 22, 1996. *Id.* States can enact legislation to exempt themselves from disqualifying such individuals, but Michigan is not among those states as MDHHS prohibits persons with multiple drug felonies from receiving FAP benefits. *Id.* and BEM 203 (October 2015), pp. 1-2.

MDHHS presented court documents indicating 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 provided; however, Respondent’s conviction dates were sufficiently after August 22, 1996, that it can be inferred that each felony corresponded to an offense date after August 22, 1996.

MDHHS alleged a FAP-OI period from May 2017 through August 2017. Documents of Respondent’s FAP issuance history listed FAP benefit issuances from May 2017 through August 2017 totaling \$[REDACTED]. Respondent’s application listed only Respondent as a household member; as the only household member, Respondent is assumed to have been the only FAP-group member throughout the alleged OI period. As the only group member, a disqualification of Respondent renders Respondent ineligible for all FAP benefits received during the alleged OI period.

The evidence established Respondent was convicted of multiple drug-related felonies which disqualified Respondent from FAP eligibility during the alleged OI period. MDHHS established that Respondent received \$769 in over-issued FAP benefits due to the disqualification not being applied. Thus, MDHHS established a basis for recoupment of \$[REDACTED] in FAP benefits. MDHHS further alleged that the overissuance was an IPV justifying imposing a disqualification period.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

IPV is suspected when there is **clear and convincing** evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (January 2016) p. 1. 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).

Court documents verified that Respondent was convicted multiple times for drug felonies. Respondent reported on an application having no past 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 in writing a history of multiple 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 disqualify Respondent from benefit eligibility.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

MDHHS did not allege that Respondent previously committed an IPV. Thus, a 1-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 May 2017 through August 2017. The MDHHS requests to establish an overissuance and a 1-year disqualification period 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

LaClair Winbush
MDHHS-Wayne 31-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
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C Gardocki
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