



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: February 5, 2019  
MAHS Docket No.: 18-010131  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR  
INTENTIONAL PROGRAM VIOLATION**

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 January 14, 2019, 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 Allyson Carneal, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUE**

The issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification.

**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], 2002, Respondent was convicted or plead guilty of "CONTR SUB DEL/MANUF" under MCL 333.7401(2)(d)(iii). Respondent was also convicted or plead guilty of "CONTR SUB IMIT MANUF DIST" under MCL 333.7341(3). (Exhibit A, pp. 11-14.)

2. On [REDACTED], 2004, Respondent was convicted or plead guilty of “CONTR SUB DEL/MANUF” under MCL 333.7401(2)(d)(iii). (Exhibit A, p. 15.)
3. On [REDACTED], MDHHS received Respondent’s application for Food Assistance Program (FAP) benefits. Respondent checked “No” in response to a question asking if he was convicted of a drug felony occurring after August 22, 1996. Respondent also checked “No” in response to a follow-up question asking if he was convicted more than once. (Exhibit A, pp. 16-39.)
4. On March 3, 2014, MDHHS received Respondent’s Redetermination. Respondent checked “No” in response to a question asking if he was convicted of a drug felony occurring after August 22, 1996. Respondent also checked “No” in response to a follow-up question asking if he was convicted more than once. Exhibit A, pp. 40-43.
5. On March 13, 2015, MDHHS received Respondent’s Redetermination. Respondent checked “No” in response to a question asking if he was convicted of a drug felony occurring after August 22, 1996. Respondent also checked “No” in response to a follow-up question asking if he was convicted more than once. Exhibit A, pp. 44-49.
6. On July 18, 2017, Respondent submitted to MDHHS an electronic application requesting FAP benefits. Respondent answered “No” in response to questions asking if he was convicted of a drug felony and whether he was convicted more than once. Exhibit A, p. 50-63.
7. On July 19, 2017, Respondent’s specialist documented that Respondent reported having no past drug felonies. Exhibit A, p. 64.
8. On September 14, 2018, MDHHS established that Respondent received \$5,017 in over-issued FAP benefits from September 2012 through August 2017. Exhibit A, pp. 67-138.
9. On September 28, 2018, MDHHS requested a hearing to impose a 1-year IPV disqualification period against Respondent for the overissuance established against Respondent dated September 14, 2018. (Exhibit A, p. 1.)
10. 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 overissuance of \$5,017 in FAP benefits based on Respondent's failure to report past drug felonies. MDHHS testimony also indicated that an overissuance claim was previously established; the MDHHS testimony was unrebutted and consistent with presented documents. For the present hearing, MDHHS sought to only establish a disqualification period based on an allegation that the established overissuance claim was caused by an IPV.

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 Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. 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).

Federal regulations allow states to disqualify persons convicted of multiple drug felonies. 7 CFR 273.11(m). FAP ineligibility is only applicable to crimes with offenses 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 listing Respondent as a defendant under two different docket numbers. For each docket number, Respondent was convicted of a controlled substance crime. The statute corresponding to each crime is a felony under Michigan law. Offense dates were not apparent; however, Respondent's plea/conviction dates were sufficiently after August 22, 1996, that it can be inferred that each felony involved an offense date after August 22, 1996.

MDHHS presented various documents related to an overissuance which was previously established. The documentation established that Respondent received \$5,017 in overissued FAP benefits due to Respondent's failure to report drug felonies.

Respondent reported on multiple reporting documents (2 applications and 2 redetermination forms) that he had no previous drug felonies. Boilerplate language on 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 past drug felony convictions. Respondent's misreporting directly led to overissued benefits. Generally, a client's written statement which contradicts known facts resulting in an overissuance 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 impose a disqualification period against Respondent.


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 one-year disqualification period is justified.<sup>1</sup>

### **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 over-issued FAP benefits. The MDHHS request to establish a one-year disqualification period against Respondent are **APPROVED**.

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**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

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<sup>1</sup> Though only a one-year disqualification applies for an IPV, MDHHS may have permanently disqualified Respondent from FAP eligibility due to Respondent having multiple drug felony convictions (see BEM 203)

