



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 19, 2019
MAHS Docket No.: 18-012301
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM**

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 March 11, 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 Chris Tetloff, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established a recipient claim of Food Assistance Program (FAP) benefits against Respondent.

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.

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 September 13, 2005, Respondent plead nolo contendere to “CNTR SUB DEL/MANUF” under MCL 333.7401(2)(d)(iii). Exhibit A, pp. 73-75. Respondent’s offense date was February 27, 2005. Exhibit A, p. 72.
2. On November 4, 2010, Respondent plead guilty to “Controlled Substance-Delivery/Manufacture Marijuana” under MCL 333.7401(2)(d)(iii). Exhibit A, pp. 76-77. Respondent’s offense date was January 14, 2010. Exhibit A, p. 72.
3. On February 25, 2013, Respondent submitted to MDHHS a handwritten application for FAP benefits. Reported household members included Respondent and his son (hereinafter, “Son”). Respondent checked “Yes” in response to a question asking if any household member was convicted of a drug-related felony occurring after August 22, 1996; Respondent checked “No” in response to a follow-up question asking if anyone was convicted more than once. Boilerplate language stated that Respondent’s signature was certification, under penalties of perjury, that all reported information was accurate. Exhibit A, pp. 12-35.
4. On February 19, 2014, Respondent submitted to MDHHS a handwritten application for FAP benefits. Reported household members included Respondent and Son. Respondent checked “No” in response to questions asking if anyone was convicted of a drug felony after August 22, 1996, and if anyone was convicted more than once. Boilerplate language stated that Respondent’s signature was certification, under penalties of perjury, that all reported information was accurate. Exhibit A, pp. 36-59.
5. On October 15, 2015, Respondent submitted to MDHHS a Redetermination form. Reported household members included Respondent and Son. Respondent checked “No” in response to questions asking if anyone was convicted of a drug felony after August 22, 1996, and if anyone was convicted more than once. Boilerplate language stated that Respondent’s signature was certification, under penalties of perjury, that all reported information was accurate. Exhibit A, pp. 60-65.
6. In July 2017, MDHHS calculated that Respondent received \$4,872 in over-issued FAP benefits as a result of unreported drug felonies. Exhibit A, pp. 78-120.
7. On November 19, 2018, MDHHS requested a hearing to establish a recipient claim of \$4,872 in FAP benefits allegedly overissued from February 2013 through May 2016. MDHHS also sought to impose a one-year IPV disqualification period 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 overissuance of \$4,872 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 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 conviction is a felony under Michigan law. Offense dates obtained by MDHHS from the Michigan Department of Corrections indicated that each drug felony involved a corresponding offense date after August 22, 1996.

MDHHS alleged a FAP-OI period from February 2013 through May 2016. MDHHS presented FAP budgets and Respondent's FAP-issuance history which supported finding that Respondent's FAP group received \$4,872 as a result of Respondent's improper inclusion in the FAP group.

The evidence established that Respondent was convicted of multiple drug-related felonies which disqualified Respondent from FAP eligibility during the alleged OI period. MDHHS established that Respondent received \$4,872 in over-issued FAP benefits because of the disqualification not being applied. Thus, MDHHS established a recipient

claim of \$4,872 in FAP benefits. MDHHS further alleged that the benefit overissuance was caused by an IPV justifying a disqualification against Respondent.

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).

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 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).

Court documents verified that Respondent was convicted multiple times for drug felonies. Respondent reported on an application and Redetermination form that he had no history of drug felonies. On an earlier application, Respondent reported having only one previous drug felony. 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 under-reported 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.

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 \$4,872 in over-issued FAP benefits for the period from February 2013 through May 2016. The MDHHS requests to establish a recipient claim and a one-year disqualification period against Respondent are **APPROVED**.

CG/cg



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS-Bay-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

██████████
████████████████████
██