



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 6, 2020
MOAHR Docket No.: 19-009597
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION TO ESTABLISH
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 held on January 22, 2020, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. MDHHS was represented by Daniel Marchetti, 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 [REDACTED], 1998, Respondent was found guilty of "CONTROLLED SUBSTANCE – DEL / MFG (SCHEDULE 1, 2 & 3)" under MCL 333.7401(2)(B-A) from an incident on March 12, 1998.

2. On [REDACTED], 2012, Respondent pleaded guilty to “FELONY CONTROLLED SUBSTANCE – DEL/MFG MARIJUANA” under MCL 333.7401(2)(d)(3) from an incident on November 10, 2011.
3. On March 19, 2018, Respondent electronically submitted to MDHHS an application requesting FAP benefits. Respondent reported a household of one person. Respondent answered “no” to a question asking if anyone was convicted of a drug felony occurring after August 22, 1996. Exhibit A, pp. 12-17.
4. On January 28, 2019, Respondent electronically submitted to MDHHS an application requesting FAP benefits. Respondent reported a household of one person. Respondent answered “no” to a question asking if anyone was convicted of a drug felony occurring after August 22, 1996. Exhibit A, pp. 18-23.
5. From March 2018 through July 2019, MDHHS issued to Respondent \$1,442 in FAP benefits. Respondent’s benefit eligibility was based on a one-person FAP group.
6. On [REDACTED], 2019, MDHHS requested a hearing to establish a recipient claim of \$1,442 for FAP benefits allegedly overissued to Respondent from March 2018 through July 2019. MDHHS also sought to impose a 1-year IPV disqualification period against Respondent.
7. 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 requested a hearing to establish a recipient claim against Respondent for \$1,442 in FAP benefits allegedly overissued to Respondent from March 2018 through July 2019. Exhibit A, p. 1. In an Intentional Program Violation Repayment Agreement sent to Respondent, MDHHS specifically alleged that Respondent failed to report multiple controlled substance felonies. Exhibit A, pp. 6-7.

MDHHS may request a hearing to establish a debt. BAM 600 (October 2017) p. 5. 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). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance. CFR 273.18(c)(1). Additionally, expunged benefits (i.e. unused benefits which eventually expire from non-use) are to be subtracted from the overissuance.

Federal regulations allow states to disqualify persons convicted of multiple drug felonies from receiving FAP benefits. 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. Exhibit A, pp. 24-32. For each docket number, Respondent was convicted of a controlled substance crime. The state statute corresponding to each crime is a felony under Michigan law. Offense dates for each crime each were listed; each offense date was after August 22, 1996.

MDHHS alleged an OI period from March 2018 through July 2019 based on Respondent’s multiple prior drug convictions. Respondent’s benefit history listed FAP issuances totaling \$266 from March 2018 through April 2018 and \$1,176 from January 2019 through July 2019; thus, a total of \$1,442 of FAP benefits was issued to Respondent during the alleged OI period. Exhibit A, pp. 33-34. Respondent’s application dated March 19, 2018, reported only Respondent as a household member; presumably, Respondent was the only group member throughout the alleged OI period.¹ Exhibit A, pp. 12-23. As the only group member, a disqualification of Respondent would render all FAP benefits issued during the alleged OI period to be an overissuance.

MDHHS presented Respondent’s FAP expenditure history from February 10, 2019, through July 20, 2019. Exhibit A, pp. 35-37. The history listed \$1,449.59 in expenditures. Respondent’s expenditures were consistent with an absence of benefit expungement.

MDHHS established that Respondent was convicted of multiple drug-related felonies which disqualified Respondent from receiving FAP benefits during the alleged OI period. MDHHS established that Respondent received \$1,442 in over-issued FAP benefits because of the disqualification not being applied. Thus, MDHHS established a recipient claim against Respondent for \$1,442. MDHHS further alleged that the benefit overissuance was the result of an IPV justifying a disqualification period.

¹ This presumption is consistent with Respondent’s FAP issuance amounts which were at or below the maximum FAP issuance for a 1-person group. See RFT 260.

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).

Respondent reported on benefit applications dated March 19, 2018, and January 28, 2019, not having previous drug-related felonies. Court documents listing drug felony crimes verify that Respondent's reporting to MDHHS was false. MDHHS policy states that clients must completely and truthfully answer all questions on forms and in interviews. 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.²

The evidence established that Respondent misreported to MDHHS past drug felony convictions. Respondent's misreporting directly led to an overissuance of FAP benefits. A client's misreporting of information causing an overissuance of FAP benefits is clear and convincing evidence of a fraudulent intent. Based on the evidence, MDHHS 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 1-year disqualification period is justified for Respondent's first IPV.

² MDHHS presented documentation dated September 4, 2019, from its database showing Respondent not coded as disabled. Respondent not meeting MDHHS' definition of disability is consistent with an ability to understand a responsibility to report information truthfully.

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 \$1,442 in over-issued FAP benefits from March 2018 through July 2019. The MDHHS requests to establish a recipient claim of \$1,442 and a 1-year IPV 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Macomb-36-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

