

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006113
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 10, 2015
County: Calhoun

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), 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 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 June 10, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on April 27, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent signed Assistance Applications (DHS-1171) on November 14, 2011, and April 20, 2014, in addition to a Redetermination (DHS-1010) on October 22, 2012, acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him. (Dept. Ex A, pp 10-29, 30-37, 38-47).
5. Respondent indicated on the Assistance Applications and Redetermination that he had never been convicted of a drug-related felony and had not been convicted more than once by checking the "no" boxes for the questions under information DHS needs to know. (Dept. Ex A, pp 27, 37, 41-42).
6. On April 15, 2015, the Department received a Judgment of Sentence to Commitment to Corrections Department from the [REDACTED] indicating Respondent pled no contest and was found guilty on August 17, 2000, of the felony of Possession of a Controlled Substance, 333.7403(2)(A)(5). (Dept. Ex A, pp 48-51).
7. On April 15, 2015, the Department received a second Judgment of Sentence to Commitment to Corrections Department from the [REDACTED] indicating Respondent pled no contest and was found guilty on January 11, 2008, of the felony of Delivery and/or Manufacture of a Controlled Substance, 333.7401(. (Dept. Ex A, pp 52-55).
8. Respondent received \$ [REDACTED] in FAP benefits from the State of Michigan during the fraud period of November 14, 2011, through August 31, 2013. If Respondent had properly reported that he had two felony drug convictions, Respondent would have been entitled to receive \$0 in FAP benefits. (Dept. Ex A, pp 53-61).
9. Respondent failed to report his two felony drug convictions, resulting in a FAP overissuance of \$ [REDACTED] for the fraud period of November 14, 2011, through August 31, 2013.
10. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
11. This was Respondent's first alleged IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS). The following are the relevant policy statements and instructions Department caseworkers follow.

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. The Department (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 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee. BAM 720, p 12 (10/1/2014).

Intentional Program Violation

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 reporting responsibilities. BAM 700 (10/1/2014), p 7; BAM 720, p 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1.

An IPV requires that the Department establish by 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, p 1 (emphasis in original); see also 7 CFR 273(e)(6). 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.

Claimant was convicted of two felony drug convictions on August 17, 2000, and January 11, 2008.

In this case, Respondent intentionally omitted his two felony drug convictions from the assistance applications and redetermination that he completed, signed and submitted when he checked “no” that he did not have any felony drug convictions.

Drug-Related Felony FIP and FAP

1st Offense: A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative.

2nd Offense: An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p 2 (10/1/2011).

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 15. Clients are permanently disqualified if both felony drug offenses occurred after August 22, 1996. BEM 203, p 2.

In this case, Respondent's felony drug convictions were on August 17, 2000, and January 11, 2008.

Therefore, Respondent is permanently disqualified.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

The FAP Issuance Summary from November 14, 2011, through August 31, 2013, showed Respondent received \$ [REDACTED] in FAP benefits. Had Respondent honestly reported his two felony drug convictions, he would have been eligible to receive \$0 in FAP benefits. Hence, he received an overissuance of \$ [REDACTED] in FAP benefits for the fraud period.

In this case, the Department has shown by clear and convincing evidence that Respondent received an OI of benefits. The OI was due to Respondent intentionally failing to report his two felony drug convictions. According to BAM 700, the Department may recoup this OI.

DECISION AND ORDER

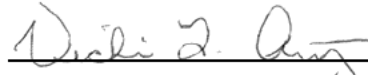
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be permanently disqualified from receiving FAP benefits.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/15/2015**

Date Mailed: **6/15/2015**

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NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

