



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 15, 2016
MAHS Docket No.: 16-004947
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 hearing was held on [REDACTED] from Detroit, 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 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 [REDACTED], 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 **was** aware of the responsibility to respond completely to redetermination questions regarding her food assistance group member regarding prior drug-related felony convictions.
5. The Department to the best of its knowledge testified that Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] through [REDACTED], (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the state of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period. Exhibit A, p. 51.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 (January 1, 2016), p. 12-13; ASM 165 (May 1, 2013), p. 2-3.

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 (January 1, 2016), p. 3-4; 7-8; BAM 720, p. 2.

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. 21 (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.

In this case, the Respondent filed a Change Report dated [REDACTED], with the Department adding several group members including her fiancé, [REDACTED]. Thereafter, the Petitioner completed two Redeterminations, which she signed. The Respondent answered “No,” as regards everyone in her household, to the question “has anyone been convicted of a drug-related felony occurring after [REDACTED] Exhibit A, pp. 37 and 43. The Redeterminations were submitted on [REDACTED], and [REDACTED]. On the second redetermination, the Respondent also answered “no” to the question whether there had been more than one conviction. Exhibit A, p. 43. The preface to the question regarding drug-related felony convictions states: “INFORMATION DHS NEEDS TO KNOW - answer for **everyone** in your household.” The Respondent also indicated that she purchased and prepared food with her fiancé.

The Department presented evidence of three separate convictions for drug-related felonies for the Petitioner’s fiancé, [REDACTED]. Exhibit A, pp. 45, 47 and 49. The first conviction occurred in [REDACTED], (Controlled Substance obtaining by fraud, attempt); the second conviction occurred in [REDACTED] (controlled substance – possession (nonnarcotic substance added to schedules one and two); and the third conviction occurred on [REDACTED] (controlled substance – possession narcotic or cocaine less than 25 grams, attempt). Department policy provides:

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 1, 2015) p. 1

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.
- Receipt of FAP benefits requires an authorized representative.

2nd Offense

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p. 2

Thus, based upon the evidence presented, the Department has demonstrated by clear and convincing evidence that the Respondent committed an IPV by failing to report the group member drug-related felony convictions causing her to receive more FAP benefits than she was otherwise entitled to receive.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 16; BEM 708 (April 1, 2016), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department, having demonstrated by clear and convincing evidence that the Respondent had committed an IPV involving her FAP benefits, the Department is entitled to a finding that Respondent is disqualified for one year as it is Respondent's first IPV.

Overissuance

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

In this case, the Department has demonstrated that during the period [REDACTED] through [REDACTED] the Respondent received FAP benefits that she was not entitled to receive as she failed to report on two occasions during redetermination drug-

related felonies convictions for a group member who was not eligible to FAP due to the drug-related felony convictions causing an OI of FAP benefits. The individual who was a group member was not entitled to receive FAP due to his drug-related felony convictions. Therefore, the Department is entitled to a finding of OI in the amount of \$ [REDACTED]. The Department presented FAP OI budgets for the period in question, which were reviewed at the hearing and based upon this review it is determined that the Department met its burden to establish an OI of FAP benefits in the amount of \$ [REDACTED].

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:

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/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **12 months**.

LMF/jaf



Lynn M. Ferris
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) 335-6088; 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

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]

cc:

[REDACTED]