



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 29, 2016
MAHS Docket No.: 16-010698
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 September 12, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Ernest Scruggs (Respondent).

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 April 28, 2016, 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 is a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in criminal disqualifications.
5. 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 December 1, 2011 to March 31, 2016 (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 \$0.00 in such benefits during this time period.
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 US 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 January 1, 2016, 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 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 2016), 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.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his prior drug-felony convictions, which occurred after August 22, 1996.

Effective October 1, 2011, 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 (October 2011), p. 2.

Effective October 1, 2012, 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 (October 2012 to October 2015), p. 2.

First, the Department presented Respondent's court documents in which it argued that Respondent had been convicted of two felony drug convictions on or about [REDACTED], and [REDACTED]. Exhibit A, pp. 36-42.

Second, the Department presented Respondent's application dated November 14, 2011, to show that the Respondent was aware of his responsibility to report changes as required. Exhibit A, pp. 11-31. In the application, Respondent marked "yes" to the question that asked if he had been convicted of a drug-related felony occurring after August 22, 1996, but "no" to the question if he had been convicted more than once. Exhibit A, p. 28.

Third, the Department presented four of Respondent's application submitted throughout the alleged fraud period. Exhibit A, pp. 43-94. In the applications, Respondent marked "no" to the question that asked if he had been convicted of a drug felony and/or convicted more than once. See Exhibit A, pp. 47, 60-61, 72-73, and 86.

At the hearing, Respondent argued and/or made the following assertions: (i) he did not intend to commit a violation of the FAP program; (ii) he did not dispute that he had one drug-related felony dated on or around [REDACTED], but was unsure why the first drug-related felony was not reported on the four subsequent applications; (iii) he disputed that he had the second alleged drug-related felony dated on or around [REDACTED] because he thought he made a plea agreement and the charge was struck down to a misdemeanor; (iv) the undersigned inferred from his argument that because he believed he only had one drug-related felony, he properly reported it to the Department on his application dated November 14, 2011 (Exhibit A, p. 28) and the Department should followed-up on the reported drug felony; and (v) the Department is aware that he has one drug-related felony because he has an authorized representative assigned to his Electronic Benefits Transfer (EBT)/Bridge card, except he stated that he

did not have an authorized representative assigned to his most recent card. See BEM 203, p. 2 (If a person who has been convicted of a 1st offense drug-related felony and the individual is not in violation of the terms or probation or parole, a receipt of FAP benefits requires an authorized representative).

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits. Respondent claimed that he only had been convicted of one drug-related felony and the second conviction was a misdemeanor conviction as a result of plea agreement. Further, Respondent argued that he properly reported his one-drug related felony (i.e., application dated November 14, 2011 (Exhibit A, p. 28)), and he subsequently had an authorized representative assigned to his EBT/Bridge card as required per policy. See BEM 203, p. 1. However, the undersigned does not find Respondent's argument credible.

First, the undersigned reviewed the evidence record and found no indication that the second drug-related conviction was a misdemeanor. Instead, the evidence presented that Respondent was convicted of a felony for the use, possession, or distribution of controlled substances two or more times after August 22, 1996. BEM 203, p. 2 and Exhibit A, pp. 36-42.

Second, Respondent might have properly informed the Department of his first drug-related felony in the application dated November 14, 2011 and an authorized representative was subsequently assigned. However, the undersigned still questions Respondent's credibility. For example, the Department presented four of Respondent's applications submitted throughout the fraud period. Exhibit A, pp. 43-94. In the applications, Respondent did not even report his first drug-related felony as he previously done. See Exhibit A, pp. 28, 47, 60-61, 72-73, and 86. Respondent's failure to even report his first drug-related felony in the four subsequent applications, makes the undersigned question his arguments. Instead, the Department presented evidence to show that Respondent committed an IPV of his FAP benefits. The Department presented four of Respondent's applications submitted throughout the fraud period, in which Respondent indicated "no" to the question if whether he was convicted of a drug felony, even though the evidence established that he was convicted of two or more drug-felonies. See Exhibit A, pp. 36-42, 47, 60-61, 72-73, and 86. As such, Respondent committed an IPV of his FAP benefits when he intentionally withheld his criminal justice disqualification information (i.e., marking "no" to the drug-related felony question) for the purpose of maintaining his FAP eligibility. This would have made Respondent permanently disqualified from FAP benefits because he was convicted of a 2nd offense drug-related felony after August 22, 1996. See BEM 203, p. 2.

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. 15; BEM 708 (April 2014), 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

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 amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

As previously stated, Respondent should have been permanently disqualified from FAP eligibility because he was convicted of a 2nd offense drug-related felony after August 22, 1996. BEM 203, p. 2. Thus, Respondent was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits.

In establishing the OI amount, the Department presented Respondent's benefit issuance summary showing that he was issued FAP benefits by the State of Michigan from December 1, 2011 to March 31, 2016, which totaled [REDACTED] Exhibit A, pp. 32-35. As such, the Department is entitled to recoup [REDACTED] of FAP benefits it issued to Respondent from December 1, 2011 to March 31, 2016.

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 program 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, less any amount already recouped and/or collected.

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

EF/tm



Eric J. Feldman
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]
[REDACTED]
[REDACTED]
[REDACTED]

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CC:

[REDACTED]
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