



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: October 4, 2016
MAHS Docket No.: 16-009900

[REDACTED]
[REDACTED]
[REDACTED]

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 October 4, 2016, from Lansing, Michigan. Respondent personally appeared and testified.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General. [REDACTED] testified on behalf of the Department. The Department submitted 62 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance of Food Assistance Program 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?
3. Should Respondent be disqualified from receiving Food Assistance Program benefits for a lifetime?

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 Office of Inspector General filed a hearing request on March 31, 2016, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an Intentional Program Violation.
2. The Office of Inspector General has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of Food Assistance Program benefits issued by the Department.
4. Respondent was aware of the responsibility to report previous drug convictions as evidenced by his checking "no," both on his January 25, 2011, Food Assistance Program application and his January 22, 2015, Food Assistance Program Redetermination when asked if he had previous drug convictions. [Dept. Exh. 14, 40].
5. Respondent credibly testified that he pled guilty to felony drug convictions on December 22, 2003, and January 11, 2005.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 13].
7. The Department's Office of Inspector General indicates that the time period it is considering the fraud period is March 4, 2011 through September 30, 2015. [Dept. Exh. 49-58].
8. During the fraud period, Respondent was issued [REDACTED] in Food Assistance Program benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. [Dept. Exh. 4].
9. The Department alleges that Respondent received an overissuance in Food Assistance Program benefits in the amount of [REDACTED]. [Dept. Exh. 4].
10. This was Respondent's first alleged Intentional Program Violation. [Dept. Exh. 4].
11. 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 [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 Office of Inspector General requests Intentional Program Violation hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- Food Assistance Program trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program, State Disability Assistance, Child Development and Care, Medicaid and Food Assistance Program programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program 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, pp 12-13 (1/1/2016).

Criminal Justice Disqualifications

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (10/1/2015). 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.

In this case, Respondent was convicted of a felony for possession of controlled substances on December 22, 2003 and January 11, 2005. Because the two convictions occurred in two separate periods after August 22, 1996, Petitioner is permanently disqualified from receiving Food Assistance Program benefits.

Intentional Program Violation

Suspected Intentional Program Violation means an overissuance 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 720, p 1.

An Intentional Program Violation 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, when Respondent was asked if he had previous drug convictions on both his January 25, 2011, Food Assistance Program application and his January 22, 2015, Redetermination, Respondent checked “no”. Respondent testified that he may have “overlooked” the questions. As evidenced by Respondent clearly answering “no” on both the application and redetermination, the Department has established clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing and maintaining Food Assistance Program benefits.

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 disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 18. 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 17.

In this case, both of Respondent's felony drug convictions occurred after August 22, 1996. As a result, Respondent is disqualified from receiving Food Assistance Program benefits for a lifetime.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

In this case, Respondent received [REDACTED] in Food Assistance Program benefits. Because Respondent had two felony drug convictions after August 22, 1996, Respondent was not eligible for Food Assistance Program benefits. Therefore, Respondent received an overissuance of [REDACTED] for the fraud period of March 4, 2011 through September 30, 2015.

Respondent contended that he has not been involved with drugs since 2005 and now that he is homeless and unemployed and needs to apply for disability, the State of Michigan cannot deny him Food Assistance Program benefits.

While this Administrative Law Judge acknowledges Respondent's genuine concern for his welfare because he is homeless and unemployed, she is bound by the laws and regulations governing the issuance of Food Assistance Program benefits, on which the Department's policies are based. By Respondent's own testimony and the record evidence, Respondent was convicted of two felony drug convictions after August 22, 1996, which he did not report and the Department properly applied policy in finding an Intentional Program Violation.

Respondent's grievance centers on dissatisfaction with the Department's current policy. Respondent's request that his Food Assistance Program benefits be reinstated is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the Department policy set out in the program manuals. Furthermore, administrative adjudication is an

exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). As such, the Department's finding that Respondent committed an Intentional Program Violation and received an overissuance of Food Assistance Program benefits that must repaid is upheld.

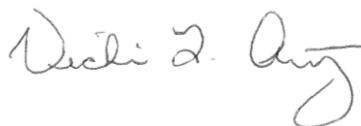
DECISION AND ORDER

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

1. The Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation.
2. Respondent did receive an overissuance of program benefits in the amount of [REDACTED] from the Food Assistance Program.

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 disqualified from the Food Assistance Program for a lifetime.



Vicki Armstrong

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]