



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: December 29, 2016
MAHS Docket No.: 16-013183
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 December 15, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED] (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 June 23, 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 was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in criminal justice 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 March 9, 2011 to August 31, 2015 (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.

Effective January 1, 2009 and July 1, 2011, BEM 203 stated that a person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- He is in violation of the terms of probation or parole (see above), **and**
- The conduct for which he was convicted occurred after August 22, 1996.

BEM 203 (January 2009 and July 2011), p. 2. If the person is not in violation of the terms of probation or parole, Family Independence Program (FIP) benefits must be paid in the form of restricted payments (see BAM 420) and he must have an authorized representative for FAP. BEM 203, p. 2.

Effective October 1, 2011, BEM 203 added the 2nd offense drug-related felony policy, which stated that stated 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, BEM 203 stated 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 January 2015), p. 2. BEM 203 added the words “in separate periods.” See BEM 203, p. 2.

Based on the above policy, the two or more drug-related felony disqualification did not become effective until October 1, 2011.

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.

First, the Department argued that Respondent was convicted of a felony on or about [REDACTED]; [REDACTED]; and [REDACTED], for the use, possession, or distribution of controlled substances two or more times after August 22, 1996. See BEM 203, p. 2 and see Exhibit A, pp. 94-109.

Second, the Department presented Respondent’s application dated August 25, 2010, to show that he acknowledged his rights and responsibilities to report changes as required. Exhibit A, pp. 12-26. In the application, Respondent answered “yes” and provided his name to the question that asked if he had ever been convicted of a drug-related felony occurring after August 22, 1996. Exhibit A, p. 25. The application did not

have a question that asked if he had been convicted of more than one drug-related felony. Exhibit A, p. 25.

Third, the Department presented Respondent's application dated March 9, 2011, which was submitted during the alleged fraud period. Exhibit A, pp. 27-45. In the application, Respondent marked "no" to the question that asked if he had been convicted of a drug felony, even though the Department argued that he had two drug-related felonies at the time. Exhibit A, p. 43.

Fourth, the Department presented Respondent's application dated January 6, 2012, which was submitted during the alleged fraud period. Exhibit A, pp. 46-66. In the application, Respondent marked "yes" to the question that asked if he had been convicted of a drug felony, but "no" to the question that asked if he had been convicted more than once, even though the Department argued that he had two drug felonies at the time. Exhibit A, p. 63.

Fifth, the Department presented Respondent's application dated January 13, 2012, which was submitted during the alleged fraud period. Exhibit A, pp. 67-87. In the application, Respondent marked "yes" to the question that asked if he had been convicted of a drug felony, but "no" to the question that asked if he had been convicted more than once, even though the Department argued that he had two drug felonies at the time. Exhibit A, p. 84.

Sixth, the Department presented Respondent's redetermination dated November 3, 2014, which was submitted during the alleged fraud period. Exhibit A, pp. 88-93. In the redetermination, Respondent marked "no" to the questions that asked if he had been convicted of a drug felony(s), even though the Department argued that he had two drug felonies at the time. Exhibit A, p. 92.

At the hearing, Respondent argued and/or asserted the following: (i) he did not intend to commit an IPV of his FAP benefits; (ii) he did not dispute that he had been convicted of drug felonies for the conviction dates of September 11, 2003 and January 15, 2015; (iii) he disputed, though, that he was convicted of a drug felony on March 3, 2010, but instead, argued that this was a parole violation for the [REDACTED] conviction; and (iv) he indicated difficulty in the completion of the applications because he cannot read or write.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

First, Respondent acknowledged that he had been convicted of drug felonies for the conviction dates of [REDACTED] and [REDACTED]. However, Respondent argued that he was convicted of only a parole violation on [REDACTED]. However, the undersigned Administrative Law Judge (ALJ) disagrees. The Department presented

sufficient evidence showing that Respondent had been convicted of a felony drug conviction on [REDACTED]. Exhibit A, pp. 96-97. As such, the evidence presented that Respondent was convicted of a drug felony on or about [REDACTED]; [REDACTED]; and [REDACTED]. See BEM 203, p. 2 and Exhibit A, pp. 94-109.

Second, although the evidence established that Respondent had been convicted of two or more drug felonies, the undersigned ALJ finds that he did not intentionally commit a violation of the FAP program. The Department's position is that Respondent intentionally withheld or misrepresented his prior drug-felony convictions from the Department. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that he did not intend to commit a violation of the FAP program. The undersigned ALJ finds Respondent's testimony credible that he believed the second conviction in [REDACTED] was a parole violation and that he had difficulty in completing the applications. Respondent's credibility was supported by his applications dated August 25, 2010; January 6, 2012; and January 13, 2012, in which he reported his one drug felony that he believed he had at the time. Exhibit A, pp. 25, 63, and 84. These applications bolster Respondent's claim that he believed he had only been convicted of drug felony at the time and that he had difficulty in completing the applications. As such, the undersigned ALJ finds Respondent's testimony credible that he did not intend to commit an IPV of FAP benefits. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented his criminal justice disqualification for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated above, there was no IPV committed in this case. However, the undersigned ALJ concludes that Respondent had been convicted of two or more drug felonies and that he failed to report these criminal justice disqualification to the Department. See Exhibit A, pp. 94-109. Therefore, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of his two or more drug-related felonies that would have permanently disqualified from FAP eligibility. See BEM 203, p. 2. Consequently, 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, the Department presented Respondent's benefit summary inquiry showing that he was issued FAP benefits by the State of Michigan from March 1, 2011 to August 31, 2015, which totaled [REDACTED]. Exhibit A, pp. 133-144. It should be noted the Department alleged a total OI of [REDACTED]. But, Department policy states that the two or more drug-related felony disqualification did not become effective until October 1, 2011. The Department, though, still retroactively applied this policy to cover the OI period of March 9, 2011 to September 30, 2011. See Exhibit A, p. 4. Respondent could not be disqualified from FAP benefits during this period because the two or more drug-related felony policy did not exist. See BEM 203, p. 2. As such, the Department cannot recoup [REDACTED] of FAP benefits Respondent was issued for the period of March 2011 to September 2011. Exhibit A, pp. 133-134. Nevertheless, the Department can still recoup \$ [REDACTED] ([REDACTED] total OI minus [REDACTED]) in FAP benefits for the period of October 1, 2011 to August 31, 2015 in which Respondent was disqualified from FAP eligibility due to the two or more drug-related felony policy. See BEM 203, p. 2 and Exhibit A, pp. 133 and 135-144.

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 not** 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 reduce the OI to [REDACTED] for the period October 1, 2011 to August 31, 2015, and initiate recoupment/collection procedures in accordance with Department policy, less an amount already recouped and/or collected.

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
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