



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.: 16-009894

[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.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General. [REDACTED] testified on behalf of the Department. The Department submitted 47 exhibits which were admitted into evidence.

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). 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 pled guilty to felony possession of controlled substances on April 22, 2008, September 16, 2008 and June 23, 2010. [Dept. Exh. 37-41].
5. On March 1, 2011, Respondent submitted an Application for Food Assistance Program benefits. Respondent reported that she was determined disabled as of January 10, 2005, and that she received income in the form of disability benefits. [Dept. Exh. 14, 16].
6. The Department's Office of Inspector General indicated that the time period it is considering the fraud period is March 2, 2011 through January 31, 2012. [Dept. Exh. 4].
7. During the fraud period, Respondent was issued ██████████ in Food Assistance Program benefits by the State of Michigan, and the Department alleged that Respondent was entitled to no benefits during this time period. [Dept. Exh. 4].
8. The Department alleged that Respondent received an overissuance in Food Assistance Program benefits in the amount of ██████████ [Dept. Exh. 4].
9. This was Respondent's first alleged Intentional Program Violation. [Dept. Exh. 4].
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 [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 April 22, 2008, September 16, 2008 and June 23, 2010. Because the three 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 she had previous drug convictions on her March 1, 2011, Food Assistance Program Application, Respondent checked “no”. As evidenced by Respondent clearly indicating she has been determined “disabled” as of January 10, 2005, the Department was on notice that Respondent may have a physical or mental impairment that would limit her understanding or ability to fulfill this requirement. There was no other evidence introduced to indicate that Respondent understood the reporting responsibilities and intentionally withheld or misrepresented information from the Department for the purpose of establishing program benefits or eligibility. As such, the evidence does not establish, by a clear and convincing standard, that the Respondent intentionally withheld information from the Department for the purpose of maintaining FAP 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, the Administrative Law Judge has concluded that the Respondent has not committed an Intentional Program Violation. As such, the Administrative Law Judge concludes that no disqualification penalty is to be imposed.

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).

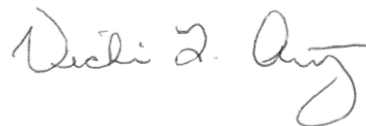
In this case, Respondent received [REDACTED] in Food Assistance Program benefits. Although the Department did not establish that the Respondent committed an Intentional Program Violation, the Department has met its burden of establishing that the Respondent received an overissuance in the amount of [REDACTED] that the Department is entitled to recoup for the fraud period of March 2, 2011 through January 31, 2012.

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 not 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.



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]
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