



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 21, 2016
MAHS Docket No.: 16-011267

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 November 29, 2016, from Lansing, 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 over issuance (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 1 year and 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 OIG filed a hearing request on May 26, 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 FAP receiving program benefits.
3. The Respondent was a recipient of FAP benefits issued by the Department. Department Exhibit 1, pgs. 42-50.
4. On the Mid-Certification Application, DHS 2240A, signed by Respondent that was mailed by the Department Caseworker on September 2, 2014, the question was not asked if the Respondent had any drug felonies after August 22, 1996. Department Exhibit 1, pgs. 32-34.
5. Respondent was aware of the responsibility to report a convicted drug felony to the Department as is required by policy found in BEM 203. He was convicted of the first drug felony on May 7, 2009, the second drug felony on August 4, 2009, and the third drug felony on August 25, 2010. Department Exhibit 1, pgs. 12-17.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2011 through October 31, 2015 (fraud period).
8. During the fraud period, Respondent was issued ██████ in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period. Department Exhibit 1, pgs. 36-40.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████
10. This was Respondent's first alleged IPV, but the Respondent would be disqualified from the FAP program for a period of a lifetime due to program ineligibility due to 2 drug felonies after 1996 in violation of BEM 203.
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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human

Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, or
 - the total OI amount is less than \$1000, **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, p. 10.

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, p. 6; 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710, p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Overissuance

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

In this case, the Respondent has been a beneficiary of FAP benefits from January 2011, but the Department could not procure a FAP application that showed the Respondent did not report he had two drug felonies that would make him ineligible for FAP benefit and have committed an IPV. This Administrative Law Judge cannot find an IPV without an application submitted to show how the Respondent answered the questions about drug felonies on the application to show intent. A Notice of Case Action does not answer the drug felony question because the FAP approval could be due to Department error not Respondent error. As a result, the Department has not met their burden of clear and convincing evidence for the IPV. This Administrative Law Judge does find that the Respondent received an over issuance of FAP benefits of [REDACTED] that the Department is required to recoup. The Respondent is disqualified from the FAP program for a lifetime due to program ineligibility due to 2 drug felonies after 1996 in violation of BEM 203.

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 did commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the FAP program.
3. 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 FAP program for a period of a lifetime due to program ineligibility due to 2 drug felonies after 1996 in violation of BEM 203.

Carmen G. Fahie

Carmen G. Fahie

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]

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