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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 17, 2016
MAHS Docket No.: 16-011993
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on October 6, 2016, from Lansing, Michigan. [REDACTED], Regulation Agent of the Office of Inspector General (OIG), represented the Department. [REDACTED], Respondent, represented himself and provided testimony at the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits?

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 requested a hearing on or about June 29, 2016, to establish that Respondent received an OI of benefits as a result of 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. On April 5, 2011, Respondent pled guilty to Possession of a Controlled Substance (MCL §333.7403). He was placed on probation and was eligible for a deferred sentence under MCL §333.7411.¹ [Exhibit 1, pp. 115-116].
5. On September 1, 2011, Respondent pled guilty to Possession of a Controlled Substance (MCL §333.7403). Petitioner was placed on probation and his conviction was entered concurrently with the April 5, 2011, conviction. [Exh. 1, pp. 117-118].
6. Respondent was aware of the responsibility to truthfully and accurately report to the Department that he had two or more felonies involving the use, possession, or distribution of a controlled substance before receiving FAP benefits.
7. Respondent did not have an apparent physical or mental impairment relating to his ability to understand or otherwise comply with the law.
8. The Department's OIG indicates that the time period it is considering the fraud period is from July 1, 2012, to June 30, 2016 (fraud period).
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
10. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
11. This was Respondent's first alleged FAP IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

¹ A court may defer the sentence of a person, who pleads guilty to, and has not previously been convicted of, certain drug offenses provided the person successfully completes probation, and meets other specified terms and conditions. Upon fulfillment of the terms and conditions, the court will discharge the person and dismiss the proceedings. If the person violates a term or condition, the court will enter the guilty plea and the criminal proceedings will continue. MCL 333.7411.

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 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-.3011.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. 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 \$500 or more, **or**
 - the total OI 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.

See BAM 720, p. 12.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

In this case, the Department alleges that Respondent committed an IPV when he failed to accurately indicate on FAP assistance applications on May 14, 2012, April 2, 2014, and January 19, 2016, that he had two drug-related felonies. According to the Department, Respondent was not eligible for FAP but he failed to report that he had two drug-related felonies, which would have made him ineligible for FAP benefits. The Department takes the position that Respondent failed to accurately report the felonies in order to receive an OI of FAP benefits. Respondent, on the other hand, contends that he did not act intentionally. Respondent did not dispute the Department's contentions concerning his drug-related felonies. Respondent testified that he mistakenly believed at the time that the April 5, 2011, conviction had been dismissed under MCL 333.7411.

Department policy requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (4-1-2016), pp. 10-11. Specifically, they must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

People convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. BEM 203, page 1 (7-1-2013). BEM 203, page 2, provides that for FAP, "[a]n 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." (Emphasis added).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

There is no dispute in this matter that Respondent had two drug-related felonies after August 22, 1996, and that he was not eligible for FAP benefits after receiving his second felony on September 1, 2011. The issue is whether there is clear and convincing evidence on the record to show that Respondent intentionally provided false or misleading information which led to an OI of FAP benefits. Here, the record shows that Respondent, after receiving his second drug-related felony, applied for FAP benefits. (Exhibit 1, pp. 31-113) Respondent, on the assistance applications, failed to disclose that he had two or more drug-related felonies. Respondent had several opportunities to do so, but he failed to do so. For example, on January 19, 2016 application, Respondent specifically denied that he had been convicted of more than

one drug felony. (Exhibit 1, p. 89). This Administrative Law Judge does not find Respondent's testimony that he did not know he had two felonies to be credible. The record shows that Respondent knew that he had more than one felony based on the sentence he received following his second conviction in September, 2011. (Exhibit 1, pp. 117-118). In addition, when Respondent received his second drug-related felony conviction, his circumstances changed. Respondent intentionally and willfully failed to accurately report this change to the Department.

Respondent was advised of his rights and responsibilities concerning program benefits when he signed each of his assistance applications. (Exhibit 1, pp. 31-113) Respondent's electronic signature on these assistance applications in the record certifies that he was aware of his rights and responsibilities, including the responsibility to make truthful statements on the application. Respondent also certified that he understood the penalties for giving false information or breaking the rules. (Exhibit 1, p. 95). Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill this requirement. The record shows that Respondent intentionally and fraudulently failed to report that he had two drug-related felonies after August 22, 1996, in order to receive an OI of FAP benefits. Accordingly, this Administrative Law Judge finds clear and convincing evidence on the whole record that Respondent committed an IPV because he intentionally failed to report information needed to make a correct benefits determination.

Disqualification

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is "[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor." BPG, p. 20. 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.

A disqualification period is defined as, "[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist." BPG, p. 20. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. 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.

In the instant matter, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits. Although Respondent should be permanently disqualified from FAP benefits under BEM 203, the Department has requested that he be disqualified for a period of 1 year. Accordingly, this Administrative Law Judge will order

that Respondent be personally disqualified from receiving FAP benefits for a period of 1 year as requested by the Department.

Overissuance

The Department must also show that Respondent received an overissuance (OI) of FAP benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (1-1-2016) p. 1.

In this matter, the Department has shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

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. Respondent did commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED].

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of 12 months.

CAP/mc



C. Adam Purnell
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]

Petitioner

[REDACTED]

Respondent

[REDACTED]