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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]
[REDACTED]
[REDACTED]

Date Mailed: December 29, 2016
MAHS Docket No.: 16-014067
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 21, 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 August 9, 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 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 October 1, 2011 to March 31, 2016 (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 [REDACTED] 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 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 October 2015), p. 2. BEM 203 added the words “in separate periods.” See BEM 203, p. 2.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department of her ex-husband’s (husband at the time, but hereinafter referred to as “group member”) prior drug-felony convictions, which occurred after August 22, 1996.

First, the Department argued that the group member was convicted of a felony on or about [REDACTED], and [REDACTED], for the use, possession, or distribution of controlled substances two or more times after August 22, 1996. Exhibit A, pp. 68-70.

Second, the Department presented Respondent’s application dated July 1, 2011, to show that she acknowledged her rights and responsibilities to report changes as required. Exhibit A, pp. 12-30. In the application, Respondent answered “no” to the question that asked if anyone had ever been convicted of a drug-related felony occurring after August 22, 1996, even though the Department argued that the group member had been convicted of more than one drug-related felony. Exhibit A, p. 28.

Third, the Department presented Respondent’s withdrawn application dated August 5, 2013, and her redetermination dated August 5, 2013, which were submitted during the alleged fraud period. Exhibit A, pp. 31-52. In the application and redetermination, Respondent marked “no” to the question that asked if anyone had been convicted of a drug felony, even though the Department argued that the group member had been convicted of more than one drug-related felony. Exhibit A, pp. 46 and 52.

Fourth, the Department presented Respondent’s redetermination dated July 28, 2014, which was submitted during the alleged fraud period. Exhibit A, pp. 53-58. In the redetermination, Respondent indicated the following: (i) she marked “yes” to the question that asked if anyone had been convicted of a drug felony, but then scribbled out that mark, but she did write the group member’s name of who had been convicted of a drug-related felony; (ii) she marked “no” to the question that asked if anyone had been

convicted of a drug felony, but then appeared to scribble out this mark as well; and (iii) she answered “no” to the question that asked if anyone was convicted more than once. Exhibit A, p. 57.

Fifth, the Department presented Respondent’s online redetermination dated June 1, 2015, which was submitted during the alleged fraud period. Exhibit A, pp. 59-67. In the redetermination, Respondent marked “yes” to the question that asked if the group member had been convicted of a drug felony, but “no” to the question that asked if the group member had been convicted more than once, even though the Department argued that the group member had two drug felonies at the time. Exhibit A, p. 64.

At the hearing, Respondent argued and/or asserted the following: (i) she did not intend to commit an IPV of her FAP benefits; (ii) she was married to the group member from on or about April of 2011 to January 31, 2014 or 2015; (iii) at the time she was married, she was unaware of his two felony drug convictions; (iv) it appeared that Respondent knew of only one possible drug conviction that the group member had at the time they were dating and every time she asked him about it, the group member’s response was “no,” and she acknowledged that it was her fault for not looking into it; (v) when completing the redetermination dated July 28, 2014, she first indicated that he had a drug felony conviction, but the group member informed Respondent that it was not a felony conviction and that is why she crossed out the “yes” box and indicated “no” to the drug felony question (Exhibit A, p. 57); and (vi) she discovered that the group member had two drug felonies after her divorce.

Additionally, the undersigned Administrative Law Judge (ALJ) inquired from Respondent that if she knew the group member had two drug felony convictions, why she indicated “no” to the question that asked if he had been convicted of more than one drug-related conviction in the online redetermination dated June 1, 2015. Exhibit A, p. 62. The undersigned ALJ did not receive a clear answer from the Respondent. Respondent testified that she did not complete the online redetermination dated June 1, 2015. Rather, Respondent indicated that she reported to her caseworker during a phone redetermination of the group member’s two drug felony convictions and that the caseworker did not input this information correctly. However, during cross-examination of Respondent, the Department testified that the redetermination can only be completed by Respondent, not the caseworker. The Department further indicated that Respondent had to submit the online form and that it might have been the follow-up redetermination interview that she was referring too in which she informed the caseworker of the drug convictions. In response, Respondent did not remember completing the form online and that she called her caseworker multiple times correcting errors by the Department.

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

First, the evidence established that the group member was convicted of a felony on or about [REDACTED], and [REDACTED] for the use, possession, or

distribution of controlled substances two or more times after August 22, 1996. Exhibit A, pp. 68-70.

Second, Respondent claimed that she did not intend to commit an IPV of her FAP benefits. However, the undersigned ALJ does not find Respondent credible. Respondent is the one who completed the redetermination when she submitted it online and electronically signed it on June 1, 2015 at 12:44 p.m. See Exhibit A, p. 67. And at the time of this redetermination, Respondent was aware of the group member's drug-related felony convictions, yet she indicated in the redetermination that he only had one drug-related felony, rather than two. Exhibit A, p. 64. Respondent provided different reasons why the question was improperly answered. However, the undersigned ALJ did not find any of her arguments convincing. Instead, Respondent clearly submitted the redetermination online on June 1, 2015 and she failed to properly answer the question that asked if the group member had been convicted of a drug felony conviction more than once. Exhibit A, pp. 59-67.

Third, the Department presented evidence to show that Respondent committed the IPV during the fraud period. The Department presented Respondent's redetermination dated June 1, 2015, in which she indicated "no" to the question that asked if whether the group member had been convicted of more one drug felony, even though the evidence established that he was convicted of two or more drug-felonies. See Exhibit A, pp. 64 and 68-70. As such, Respondent committed an IPV of her FAP benefits when she intentionally withheld the group member's two drug-related felony convictions from the Department. This would have made the group member permanently disqualified from FAP benefits because he was convicted of a 2nd offense drug-related felony after August 22, 1996. See BEM 203, p. 2. Therefore, there was clear and convincing evidence that Respondent was aware of her responsibility to report the group member's criminal justice disqualification and that she intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

As previously stated, the group member should have been permanently disqualified from FAP eligibility because he was convicted of a 2nd offense drug-related felony after August 22, 1996. See BEM 203, p. 2. Thus, the group member was not eligible for FAP benefits and Respondent was overissued FAP benefits for any period the group member was ineligible to receive FAP benefits.

In establishing the OI, the Department presented OI budgets for October 2011 to March 2016. Exhibit A, pp. 81-193. The budgets excluded the group member, resulting in Respondent's FAP group decreasing from four to three (the group member ineligible due to criminal disqualification, but the other group members were still eligible for FAP benefits). Exhibit A, pp. 81-93. A review of the OI budgets found them to be fair and correct; however, the Department miscalculated the total OI sought. The Department indicated that the total OI was [REDACTED] (Exhibit A, p. 4), but instead, the undersigned ALJ finds that it should be reduced to [REDACTED]. When the Department recalculated the budgets, several of the months actually resulted in an underissuance of benefits for Respondent. For example, in January 2012, Respondent originally received [REDACTED] in FAP benefits, but when the Department recalculated the OI, she should have actually received [REDACTED], which resulted in her being underissued [REDACTED] in benefits. Exhibit A, pp. 81 and 92-93. Policy states that Department may take these underissuances and "offset" it against the OI, but the Department failed to do so in this case. There is policy guidance in this area as shown below:

Supplements are issued through the Department's system (Bridges). BAM 406 (July 2013), p. 1. The supplemental benefit amount is deposited into the client's Electronic Benefits Transfer (EBT) food benefit account. BAM 406, p. 1. The benefit is available the next day. BAM 406, p. 1. The Department will notify the group that a supplement is authorized. BAM 406, p. 1. Do NOT issue supplements to correct underissuances caused by the client's failure to report. BAM 406, p. 1.

Supplements correcting underissuances in previous months may be "offset" against overissuances. BAM 406, p. 1. This means that the amount of the overissuance is subtracted from the amount of the supplement. BAM 406, p. 1. This might result in the whole supplement being credited. BAM 406, p. 1.

Offsetting occurs when:

- The benefit recovery system shows an overissuance balance, and
- A supplement is authorized to correct a previous month(s) underissuance, and
- The supplement was ordered by a court or administrative law judge and the order does not specifically prohibit offsetting.

BAM 406, p. 1. Offsetting is done automatically by the Department. BAM 406, p. 1.

Based on the above policy, the undersigned ALJ determines that Respondent's OI is reduced to [REDACTED] for the period of October 1, 2011 to March 31, 2016. The Department calculated a total OI of [REDACTED] in FAP benefits. See Exhibit A, pp. 4 and 81-85. However, the Department determined that Respondent was underissued a total of [REDACTED] in FAP benefits. See Exhibit A, pp. 81-85. The undersigned ALJ finds that the amount of the overissuance, [REDACTED], is "offset" by the total underissuance, [REDACTED], resulting in a reduction of the OI to be [REDACTED]. See BAM 406, p. 1 ([REDACTED] total OI sought minus [REDACTED] in supplements). Accordingly, the Department is only entitled to recoup from Respondent [REDACTED] in FAP benefits due to the discovery of the underissuances. See BAM 406, p. 1 and Exhibit A, pp. 81-85.

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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of [REDACTED]

The Department is **ORDERED** to reduce the OI to [REDACTED] for the period October 1, 2011 to March 31, 2016, and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and collected.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of **12 months**.

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

DHHS

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