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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: January 27, 2017
MAHS Docket No.: 16-012887
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 three-way telephone hearing was held on January 12, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. [REDACTED] [REDACTED] OIG, also appeared on behalf of the Department, but did not offer any testimony. Respondent appeared on his own behalf and provided testimony.

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. On November 2, 2009, Respondent was found guilty of the following felony offense: Possession of Controlled Substance [MCL 333.7403(2)(b)]. [Dept. Exh. 1, p. 37].

2. On February 12, 2013, Respondent was found guilty of the following felony offense: Possession of Controlled Substance-Methamphetamines [MCL 333.7403(2)(b)(1)]. [Dept. Exh. 1, p. 39].
3. On June 11, 2014, Respondent submitted an assistance application requesting FAP benefits. [Department's Exh. 1, pp. 11-36].
4. On the June 11, 2014, assistance application, Respondent indicated that he had been convicted of a drug-related felony that occurred after August 22, 1996. However, Respondent also indicated that he had not been convicted more than once. [Dept. Exh. 1, p. 28].
5. Respondent's brother, [REDACTED] [REDACTED] was identified on the June 11, 2014, assistance application as Respondent's authorized representative, but Respondent signed the application. [Dept. Exh. 1, pp. 29-30].
6. The Department approved Respondent's application and provided him with FAP benefits. [Dept. Exh. 1, pp. 56-58].
7. In April or May of 2015, Respondent submitted a redetermination form which indicated that he had not been convicted of more than one drug-related felony that occurred after August 22, 1996. [Dept. Exh. 1, p. 35].
8. The Department's OIG requested a hearing on June 14, 2016, to establish that Respondent received an OI of benefits as a result of having allegedly committed an IPV.
9. Respondent was aware of the responsibility to provide the Department with correct and complete information about himself and everyone in the household. Respondent was also aware of the requirement to report changes as required by applicable Department policy and/or law. [Exh. 1, p. 28].
10. Respondent did not intentionally and purposefully fail to report to the Department that he had two or more drug felony convictions that occurred after August 22, 1996.
11. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
12. The Department's OIG indicates that the time period it is considering the fraud period is from June 11, 2014, to June 30, 2015 (fraud period).
13. 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. [Exh. 1, pp. 41-55].

14. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
15. This was Respondent's first alleged FAP IPV. [Dept. Exh. 1, p. 62].
16. The OIG has requested that Respondent be disqualified from receiving program benefits.
17. 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 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 properly report to the Department that he had two or more felony drug convictions after August 22, 1996, in order to receive an OI of FAP benefits. Respondent, on the other hand, contends that he did not intentionally misrepresent anything. Respondent stated that he believed that his first felony conviction on November 2, 2009, was removed from his record or was reduced to a misdemeanor. Alternatively, Respondent argues that at the time of application, he disclosed the felony drug conviction to the Department worker and the worker recommended that he have an advocate or authorized third party sign his assistance application. Respondent says that he followed these instructions and had his brother sign the application. The Department OIG states that the Bridges computer system does not corroborate Respondent's statements in this regard.

Department policy provides that an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996. BEM 203 (10-1-2015), p. 2. [Emphasis added].

Department policy also requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (4-1-2016), pp. 10-11. Specifically, benefit recipients 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.

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.

Based upon the above Findings of Fact, there is no dispute that Respondent has two or more felony drug convictions that occurred after August 22, 1996. [Exh. 1, pp. 37-39]. However, the clear and convincing evidence on this record does not show that Respondent intentionally and purposefully failed to properly report these felony drug convictions to the Department in order to receive FAP benefits. On the contrary, the record shows Respondent did disclose, on more than one occasion, that he did have a felony conviction. [Exh. 1, pp. 28, 35]. Respondent even arranged for his brother to sign his application, purportedly based on the advice of the Department. [Exh. 1, pp. 28]. In addition, Respondent's testimony that he did not act intentionally is credible and the Department did not provide sufficient evidence to the contrary. Respondent's statements that he mistakenly believed that he only had one drug-related felony at the time is also credible. Overall, the evidence of record is not clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of FAP benefits or eligibility. Accordingly, this Administrative Law Judge finds that the Department failed to establish clear and convincing evidence that Respondent committed an IPV in this matter.

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. However, as indicated above, a person who is convicted of a felony for the "use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996." BEM 203, p. 2.

As indicated above, the Department has not shown that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent shall not be personally disqualified from FAP benefits for one year. However, Respondent may not be eligible for FAP benefits based upon having two or more drug-related felony convictions that occurred after August 22, 1996.

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. There are three different types of OIs: (1) agency errors, (2) client errors, and (3) CDC Provider errors. See BAM 700, pp. 4-7. An agency error OI is caused by incorrect action (including delayed or no action) by DHHS staff or department processes. BAM 700, p. 4. Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p. 5.

Based upon the above Findings of Facts, the Department has shown that Respondent received an OI of FAP benefits. [Exh. 1, pp. 41-55] The OI was due to a client error. BAM 700, p. 6. The client error occurred when Respondent erroneously indicated that he only had one drug-related felony after August 22, 1996, when he actually had two. This made him ineligible for FAP benefits and resulted in an OI of FAP benefits in the amount of \$ [REDACTED]. 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 not 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 not be disqualified from FAP benefits for a period of 12 months due to the first established IPV violation in the instant matter.

IT IS FURTHER ORDERED that Respondent's permanent and/or lifetime disqualification from FAP benefits remains in effect due to Respondent having two or more drug felonies that occurred after August 22, 1996.

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]