



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: January 9, 2017
MAHS Docket No.: 16-015784

[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 December 13, 2016, from Lansing, Michigan.

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 Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted [REDACTED] exhibits which were admitted into evidence. The record was closed at the conclusion of 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 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 October 6, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 49-54].
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 truthfully answer all questions on the FAP Redetermination. [Dept. Exh. 49, 54].
5. The Regulation Agent testified that there was no evidence of a physical or mental impairment.
6. Respondent did have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent indicated he was disabled on his October 6, 2014 Redetermination and listed Social Security Disability Insurance as income. [Dept. Exh. 50-51].
7. On January 26, 2000, Respondent pled guilty to Controlled Substance – Delivery/manufacture (narcotic or Cocaine). [Dept. Exh. 14].
8. On October 19, 2001, Respondent pled guilty to Controlled Substance – Delivery/manufacture (narcotic or Cocaine). [Dept. Exh. 12].
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
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 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 Delivery/manufacture of Controlled Substances on January 26, 2000, and on October 19, 2001.

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, the Regulation Agent testified that Respondent did not have an apparent physical or mental impairment that would limit his ability to fulfill his reporting responsibilities. However, Respondent clearly indicated on his October 6, 2014 Redetermination that he was “disabled” and was receiving Social Security Disability income. Therefore, the Department has not established by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of program benefits or eligibility.

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).

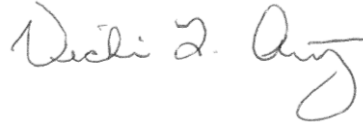
In this case, Respondent received ██████████ in FAP benefits. Because Respondent had two felony drug convictions after August 22, 1996, Respondent was not eligible for FAP benefits. Therefore, Respondent received an overissuance of ██████████ for the fraud period of October 1, 2011 through October 31, 2015.

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. Respondent did receive a FAP overissuance of program benefits in the amount of [REDACTED]

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.



VLA/db

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]
 [REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]