



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 28, 2017
MAHS Docket No.: 15-026176-RECON2

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

REHEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION REHEARING

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 rehearing was held on January 10, 2017, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and testified along with his roommate [REDACTED].

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive a [REDACTED] over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On August 6, 2003, Respondent absconded from Probation.
2. In accordance with Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications, Respondent has not been eligible for Food Assistance Program (FAP) benefits since August 6, 2003.

3. On November 28, 2011, Respondent submitted a signed Redetermination (DHS-1010). On the Redetermination (DHS-1010) Respondent indicated that no one in the household was currently in violation of probation or parole. His signature on the Redetermination (DHS-1010) certified that the information was true and complete as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
4. On November 19, 2013, Respondent submitted a signed Redetermination (DHS-1010). On the Redetermination (DHS-1010) Respondent indicated that no one in his household was currently in violation of probation or parole. His signature on the Redetermination (DHS-1010) certified that the information was true and complete as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
5. While Respondent was a recipient of Supplemental Security Income (SSI) benefits during the time at issue, his participation in this hearing shows that he does not have any physical or mental impairment that limits his understanding or ability to fulfill reporting responsibilities and provide accurate information.
6. Respondent committed an Intentional Program Violation (IPV) by intentionally misrepresenting his probation absconder status on the November 28, 2011 and November 19, 2013 Redeterminations (DHS-1010).
7. In accordance with Bridges Administration Manual (BAM) 720 Intentional Program Violation November 1, 2011, through December 31, 2013, has correctly been determined as the over-issuance period associated with this over-issuance.
8. During the over-issuance period, Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
9. The Department's OIG filed a disqualification hearing request on November 23, 2015.
10. On June 16, 2016, a hearing was conducted in Respondent's absence, in accordance with Bridges Administration Manual 720.
11. On July 8, 2016, a hearing decision was issued.
12. On November 2, 2016, Respondent submitted a request for rehearing or reconsideration.
13. On November 29, 2016, a rehearing in his matter was ordered.

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

- FAP trafficking over-issuances 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented two Redeterminations (DHS-1010) that Respondent submitted to the Department prior to the alleged OI period. On the Redeterminations (DHS-1010) Respondent indicated that he was not in violation of probation.

During this hearing Respondent testified that he did not know he was in violation of his probation. Respondent testified that after his restitution was paid he had the impression he did not have to report in anymore and no one told him he had to do anything else. There is no evidence in this record showing Respondent was informed that he had met all the requirements of his probation sentence. Respondent's testimony that he did not know he was in violation of his probation, is not credible. Therefore, his assertion that he did not know he was in violation of probation, is not credible. Therefore, Respondent's response on the Redeterminations (DHS-1010) was a misrepresentation.

This constitutes clear and convincing evidence that Respondent was aware of the responsibility to provide complete and accurate information and that he intentionally failed to do so. Therefore, the Department has established that Respondent committed an IPV.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

7 CFR § 273.16 Disqualification for intentional Program violation (e) Disqualification Hearings (8) Imposition of disqualification penalties (i) states:

If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

In this case, the Department submitted evidence showing that Respondent submitted fraudulent Redeterminations (DHS-1010). Therefore any benefit periods approved as a result of the fraudulent documents are properly part of the over-issuance period.

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented evidence showing that the State of Michigan issued Respondent a total of [REDACTED] in Food Assistance Program (FAP) benefits during the over-issuance period.

Respondent was not eligible for any Food Assistance Program (FAP) benefits during the over-issuance period. Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

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, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHeld.




Gary Heisler
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

