



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 14, 2017
MAHS Docket No.: 16-013788
Agency No.: [REDACTED]
Petitioner: OIG
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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was present at the proceeding and represented herself.

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 [REDACTED], 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 changes in 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 [REDACTED], (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 U.S. 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 [REDACTED], BEM 203 added the 2nd offense drug-related felony policy, which stated that 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 [REDACTED]. BEM 203 (October 2011), p. 2.

Effective [REDACTED], 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 [REDACTED]. 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 prior drug-felony convictions, which occurred after [REDACTED].

First, the Department presented Respondent's redetermination dated [REDACTED], to show that she acknowledged her rights and responsibilities to report changes as required. Exhibit A, pp. 10-13.

Second, the presented evidence showing that Respondent was convicted of two or more drug felonies on or about [REDACTED], and [REDACTED], for the use, possession, or distribution of controlled substances two or more times in separate periods after [REDACTED]. See BEM 203, p. 2 and Exhibit A, pp. 38-39.

Third, the Department presented Respondent's redetermination dated [REDACTED] and her application dated [REDACTED], which were submitted during the alleged fraud period. Exhibit A, pp. 14-37. In the application and redetermination, Respondent marked "no" to the question that asked if she had been convicted of a drug felony, even though the Department argued that Respondent had been convicted of more than one drug-related felony. Exhibit A, pp. 17 and 35.

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 is disabled and suffers from medical conditions, including bipolar, manic depression, and schizophrenia, in which these impairments limited her ability to understand or ability to fulfill her reporting responsibilities; (iii) after her nervous breakdown in [REDACTED] she had trouble reading and understanding questions, and when there are a lot of the questions, she reads them as a group and would have checked them all as the same, i.e., would have marked "no" through all the question on the part of the page that contained the drug-related questions (Exhibit A, p. 35) and thinks that is what happened in this case; (iv) she should have had someone assist her in completing the application; and (v) she does not

dispute the two drug-related felonies that she had. It should be noted that the undersigned Administrative Law Judge (ALJ) reviewed Respondent's application dated [REDACTED]; and she indicated that she is disabled and receives disability income and she suffers from bipolar, manic depression, and schizophrenia. Exhibit A, pp. 28 and 32.

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 presented that Respondent was convicted of two or more drug felonies on or about [REDACTED], and [REDACTED], for the use, possession, or distribution of controlled substances two or more times in separate periods after [REDACTED]. See BEM 203, p. 2, and Exhibit A, pp. 38-39.

Second, Respondent's main argument was that she suffers from medical conditions that impairs her ability to understand or ability to fulfill her reporting responsibilities. Thus, Respondent claims due to her medical conditions, she did not understand the questions on the forms that ask if she had been convicted of a drug-related felony and, therefore, did not intend to commit an IPV. Policy does state that in order for an IPV to exist, the Department must prove that the client has *no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities*. BAM 720, p. 1, (emphasis added). Thus, if the evidence shows that Respondent *did not* understand the questions regarding her drug-related questions, then no IPV would be present. However, the undersigned ALJ does not find Respondent's argument persuasive. Respondent failed to provide the undersigned ALJ any medical documents showing how her conditions actually impair her ability to understand the drug-related questions. In fact, the undersigned ALJ finds that Respondent was capable of understanding the drug-related questions because she was able to accurately answer all of the other questions on the application. For example, Respondent properly answered "no" to the question that asked if she is able to work and listed all of her medical conditions. Exhibit A, p. 28.

Additionally, Respondent claimed that when there are many questions, she reads them as a group and would have checked them all as the same, i.e., she would have marked "no" through the group of the questions on the page that contained the drug-related questions. See Exhibit A, p. 35. Again, though, the undersigned ALJ does not find her argument persuasive. Throughout Respondent's application/redetermination, she was able to answer "yes" to some questions and "no" to other questions on the same page, including the drug-related felony page. See Exhibit A, pp. 10-37. This is contrary to what Respondent said that she views many questions as the same and would mark the same response. The undersigned ALJ points all of these questions on the application because it shows in fact she understood the questions being asked on the forms and properly answered them, despite her medical conditions. Therefore, the undersigned ALJ finds that she could have also accurately answered the question that asked if she had any drug-related felonies, which she failed to do so. Accordingly, the undersigned ALJ finds that

Respondent did not have an apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities. See BAM 720, p. 1.

Instead, the Department presented evidence to show that Respondent committed the IPV during the fraud period. The Department presented Respondent's redetermination dated [REDACTED], and her application dated [REDACTED], in which she indicated "no" to the question that asked if she had been convicted of a drug felony, even though the evidence established that she was convicted of two or more drug felonies. See Exhibit A, pp. 17 and 35. As such, Respondent committed an IPV of her FAP benefits when she intentionally withheld her two drug-related felony convictions from the Department. This would have made Respondent permanently disqualified from FAP benefits because she was convicted of a 2nd offense drug-related felony after [REDACTED]. See BEM 203, p. 2. Therefore, there was clear and convincing evidence that Respondent was aware of her responsibility to report her 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 2016), 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, Respondent should have been permanently disqualified from FAP eligibility because she was convicted of a 2nd offense drug-related felony after [REDACTED]. See BEM 203, p. 2. Thus, Respondent was not eligible for FAP

benefits and was over issued FAP benefits for any period she was ineligible to receive FAP benefits.

In establishing the OI, the Department presented OI budgets for [REDACTED] to [REDACTED], and [REDACTED] to [REDACTED]. Exhibit A, pp. 40-41 and 44-65. The budgets excluded Respondent as a group member, resulting in her FAP group decreasing (Respondent ineligible due to criminal disqualification, but the other group member were still eligible for FAP benefits). Exhibit A, pp. 44-65. A review of the OI budgets found them to be fair and correct. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued from [REDACTED].

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 initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

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

EJF/jaf



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

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]

[REDACTED]