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 23, 2017
MAHS Docket No.: 16-013889
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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).

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).

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 information honestly and completely when requested by the Department.

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 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 (1/1/16), pp. 12-13**.**

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 (December 1, 2011), p. 6; BAM 720, (August 1, 2013), 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to disclose on an application and a redetermination she had been convicted of two drug-related felonies and was thus, not eligible to receive food assistance. Exhibit A, pp. 12, and 43.

For the FAP, the following disqualification from receipt of benefits results regarding convictions for drug-related felonies. Policy found in BEM 203 provides:

People convicted of certain crimes and probation or parole violators are not eligible for assistance.

1st Offense - A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, Family Independence Program (FIP) benefits must be paid in the form of restricted payments; and FAP benefits must be issued to an authorized representative.

2nd Offense - 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 1. 2012), pp. 1 and 2. (Emphasis supplied).

In this case, the Department seeks an Intentional Program Violation (IPV) involving FAP benefits due to the Respondent failing to report on a [redacted], Redetermination that she had been convicted of a drug-related felony and answered "No" as to whether she had more than one conviction. Exhibit A, p. 43. Thereafter, the Department contends the Respondent continued to receive benefits when she was not eligible to receive them due to her convictions.

The Department presented verification of drug-related felony convictions based upon criminal reporting records presented as evidence at the hearing. Exhibit A, pp. 45-67. A review of the criminal reporting records and docket records from the Circuit Court which indicate convictions involving drug-related felonies occurred on [redacted], [redacted] and on [redacted], in the [redacted] Court. Exhibit A, p. 55. Based upon this evidence and the failure to report the drug-related felony

convictions on the Redetermination, the Department has established that the Respondent committed an IPV of her FAP benefits.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 12; BEM 707 (January 1, 2013), p. 1. Clients are disqualified for 10 years for an 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. 13. 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. See BEM 708, p. 1 for provider disqualification periods. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

In this case, the Department presented clear and convincing evidence of two prior drug-related felony convictions by the Respondent that the Respondent never reported to the Department and never disclosed at redetermination and thus, established an IPV was committed by Respondent. This was Respondent's first alleged IPV; and thus, the Department is entitled to a finding of disqualification of the Respondent for 12 months.

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. 6.

In this case, the Respondent received benefits commencing [redacted] ongoing though [redacted]. During the entire period, the Respondent was ineligible; because from the start, she failed to report her felony convictions; and if she had, she would also have been ineligible to receive FAP benefits from the beginning starting with his first application dated [redacted]. The Department presented FAP Benefit Issuance Summaries that demonstrated that throughout the fraud period, the Respondent received FAP benefits that she was not entitled to receive. Exhibit A, pp. 67-69. The totals for each year were reviewed starting with [redacted] and are determined to be correct. Based upon the evidence presented, the Department did establish that it is entitled to an OI of $[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 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.

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

LMF/jaf

Lynn M. Ferris
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]