



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: March 3, 2017
MAHS Docket No.: 16-014210
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 February 22, 2017, from Lansing, Michigan.

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 40 exhibits which were admitted into evidence.

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 record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance 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 FAP benefits for 12 months?

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 Office of Inspector General filed a hearing request on August 15, 2016, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The Office of Inspector General has requested that Respondent be disqualified from receiving program benefits for 12 months.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report previous drug convictions as evidenced by his checking "no," when asked if he had been convicted of a drug felony on his October 14, 2014, and August 5, 2015, FAP applications. [Dept. Exh. 14, 27].
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 14-15, 27].
6. On January 6, 2009, Respondent pled guilty to Controlled Substance - Possession non-narcotic Substance Added to Schedules 1, 2. [Dept. Exh. 21-22].
7. 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 single felony for Controlled Substance - Possession non-narcotic Substance Added to Schedules 1 and 2, on January 6, 2009.

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, when Respondent was asked if he had previous drug convictions on his October 14, 2014 and August 5, 2015, FAP applications, Respondent checked "no". Respondent did in fact, have one prior felony drug conviction. However, one prior felony drug conviction does not disqualify an applicant from receiving FAP benefits. Therefore, the Department has not established by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing FAP benefits.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 15. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 18 (emphasis added). 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 17.

Here, the Department has requested a 12 month disqualification. Because Respondent only had one felony drug conviction that occurred after August 22, 1996, Respondent was still eligible for FAP benefits. As a result, Respondent is not disqualified from receiving FAP benefits for 12 months.

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 \$ [REDACTED] in FAP benefits. Because Respondent had only one felony drug conviction after August 22, 1996, Respondent was eligible for FAP benefits. Therefore, Respondent did not receive an overissuance.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to delete the OI and cease any recoupment action.

VLA/bb



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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]