



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 10, 2017  
MAHS Docket No.: 16-014578  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on February 15, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included his brother [REDACTED] [REDACTED] and Respondent testified on his own behalf.

### **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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (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. On August 23, 2012, the Department received Petitioner's completed Redetermination (DHS-1010) form where he reported that no one in his household had been convicted of a drug-related felony occurring after August 22, 1996. Exhibit A, pp 10-13.

2. Although Respondent signed his August 23, 2012, Redetermination form, the Department's records indicated that he had a Food Assistance Program (FAP) Authorized Representative. Exhibit A, p 10.
3. Respondent reported on his August 23, 2012, Redetermination form that he was disabled. Exhibit A, p 11.
4. On July 23, 2014, the Department received Petitioner's completed Redetermination (DHS-1010) form where he reported that no one in his household had been convicted of a drug-related felony occurring after August 22, 1996. Exhibit A, pp 14-19.
5. Although Respondent signed his July 23, 2014, Redetermination form, the Department's records indicated that he had a Food Assistance Program (FAP) Authorized Representative. Exhibit A, p 14.
6. Respondent reported on his July 23, 2014, Redetermination form that he was disabled. Exhibit A, p 15.
7. On July 8, 2015, the Department received Respondent's completed Mid-Certification Contact Notice (DHS-2240-A) where he reported no changes to the circumstances affecting his eligibility to receive continuing Food Assistance Program (FAP) benefits. Exhibit A, pp 20-22.
8. Respondent failed to report to the Department that on June 27, 2012, he had pled guilty to Possession of a Controlled Substance Less Than 25 Grams. Exhibit A, pp 30-32.
9. Respondent failed to report to the Department that on April 6, 2004, he had pled guilty to Possession of a Controlled Substance Less Than 25 Grams. Exhibit A, pp 33-36.
10. Respondent provided evidence that on June 26, 2008, he was diagnosed with acute multiple drug overdose with hypoxic brain damage. Exhibit 1, p 4.
11. Respondent provided evidence that he has a history of bi-polar disorder, chronic substance abuse, and schizophrenia. Exhibit 1, p 4.
12. Respondent provided medical records showing that his treating physician determined on June 26, 2008, that Claimant was not capable of maintaining minimal personal hygiene and was a persistent threat to the safety of himself and others. Exhibit 1, p 5.
13. Respondent provided medical records showing that by July 9, 2008, his condition had only improved only to the extent that his social and occupational functioning were seriously impaired and there was an inability to function in almost all areas. Exhibit 1, pp 11-12.

14. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from September 1, 2012, through April 30, 2016. Exhibit A, pp 23-29.
15. On August 26, 2016, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
16. This was Respondent's first alleged IPV.
17. The Department's OIG filed a hearing request on August 26, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
18. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**
  - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), p 1.

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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (October 1, 2015), p 2.

The Department received Redetermination (DHS-1010) forms signed by Respondent on August 23, 2012, July 23, 2014, where he reported to the Department that he had not been convicted of any drug-related felonies occurring after August 22, 1996. Respondent signed these forms acknowledging his duty to provide the Department with accurate information necessary to determine his eligibility for ongoing benefits, but also indicated that he had been assigned an Authorized Representative (AR) to assist him with the management of his affairs.

The Department failed to provide a copy of Respondent's initial application for FAP benefits and it cannot be determined from the hearing record whether Respondent applied for benefits on his own behalf, or whether another person applied for FAP benefits for him.

Respondent failed to report to the Department that he had pled guilty to drug-related felonies on June 27, 2012, and on April 5, 2004. If Respondent had reported these convictions to the Department then his FAP application would have been denied. Respondent received FAP benefits totaling \$ [REDACTED] from September 1, 2012, through April 30, 2016, but would not have been eligible for any of those benefits if he had reported his drug-related felony convictions to the Department. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits.

### **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, 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

The record evidence does not establish whether Respondent applied for FAP benefits on his own behalf or whether another person, such as the authorized representative listed on his Redetermination forms, provided the Department with the information used to determine his eligibility for FAP benefits.

Respondent signed Redetermination forms the Department received on August 23, 2012, and on July 23, 2014, where Respondent acknowledged his duty to provide the Department with accurate information necessary for the Department to accurately determining his eligibility for ongoing FAP benefits. Despite Respondent's acknowledgements on these forms, Respondent did not report to the Department that

he had pled guilty to more than one drug-related felony making him ineligible for FAP benefits.

Respondent provided evidence from his treating physician that on June 26, 2008, Respondent was diagnosed with multiple drug overdose with hypoxic brain damage. Respondent was also diagnosed by a treating physician with bi-polar disorder, chronic substance abuse, and schizophrenia. On June 26, 2008, Respondent's treating physician found him to not be capable of maintaining minimal personal hygiene and that he was a persistent threat to the safety of himself and others. By July 9, 2009, Respondent's treating physician found improvement to his condition but only to the extent that his social and occupational functioning was seriously impaired and that there was an inability to function in almost all areas.

Respondent's brother, who is not his FAP authorized representative, credibly testified that Respondent's mental impairments limit his understanding and ability to fulfill his duty to provide the Department with complete and accurate information necessary for the Department to accurately determine his eligibility for FAP benefits. The Department failed to provide any evidence to rebut this presumption and failed to submit a copy of Respondent's initial application for FAP benefits into the record, which would have been evidence of his acknowledgement and understanding of FAP requirements. The Department also failed to provide evidence from Respondent's initial eligibility interview, which is conducted during the processing of all FAP applications, which may have provided insight into Respondent's ability to fulfill his reporting duties.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that the Respondent intentionally failed to report that he has been convicted of more than one drug-related felony with each occurring after August 22, 1996.

The Department has not established an Intentional Program Violation (IPV).


However, since Respondent was not eligible for the FAP benefits that he did receive, he did receive an overissuance of FAP benefits. Respondent did have a duty to provide the Department with this information although his mental impairments may have interfered with his ability to provide the Department with accurate information. Therefore, the record evidence supports a finding that it was due to client error that Respondent failed to report his history of drug-related felony convictions that resulted in an overissuance of 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, if any, concludes that:

1. The Department **HAS NOT** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **DID** receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED] due to client error.
3. The Department is **ORDERED** to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. **IT IS FURTHER ORDERED** that Department shall delete the record of IPV and disqualification from Respondent's benefits file.

KS/nr

  
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Kevin Scully  
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]