



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 12, 2017
MAHS Docket No.: 16-019240
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report felony drug convictions.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is [REDACTED].
7. The Department alleges that during the fraud period Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan but was entitled to \$[REDACTED] in such benefits during this time period.
8. The Department alleges that during the fraud period Respondent received an OI in FAP benefits in the amount of \$[REDACTED].
9. This was Respondent's first alleged FAP 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 October 1, 2014, 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 (January 2016), p. 5.

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 (October 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.

In this case, the Department alleges that Respondent committed an IPV because he failed to disclose that both he and a member of his FAP group, ██████████, his living-together partner (LTP), had more than one felony drug-related conviction. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2014 and October 2015), p. 1. Effective ██████████ an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated and the qualifying conviction occurred after ██████████ or (ii) the individual was convicted two or more times and both offenses occurred after ██████████. BEM 203, p. 2.

In support of its contention that Respondent had more than one felony drug-related conviction, the Department presented documentation from the [REDACTED] District Court showing that Respondent had been charged with several drug-related felonies arising from offense dates of [REDACTED], and [REDACTED] (Exhibit A, pp. 26-29). However, there was no evidence to establish that he was actually convicted of any of those charges. Although Respondent told the OIG agent in an in-person meeting that he “may” have felony drug-related convictions, his statements were not admissions. In the absence of evidence of convictions, the Department has failed to establish that Respondent had two or more felony drug-related convictions.

In support of its contention that the LTP had more than one felony drug-related conviction, the Department presented a printout from the [REDACTED] County Court database showing that (i) in case [REDACTED], the LTP pleaded guilty on [REDACTED], to controlled substance, possession of less than 25 grams, MCL 333.7403 2A5, and (ii) in case [REDACTED], the LTP pleaded guilty on [REDACTED] to controlled substance, possession of less than 25 grams, MCL 333.7403 2A5 (Exhibit A, pp. 29-30). Based on the statutory grounds cited, both convictions are felonies. Therefore, the evidence presented was sufficient to establish that the LTP had two felony drug-related convictions after [REDACTED], and was permanently disqualified from receipt of FAP benefits after her second conviction.

In order to establish that Respondent committed an IPV by failing to disclose the LTP’s felony drug-related convictions, the Department must establish by clear and convincing evidence that he 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). Clear and convincing evidence must show that Respondent committed, and intended to commit, an IPV. 7 CFR 273.16(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 support of its contention that Respondent knew of the LTP’s felony drug-related convictions and intentionally withheld this information, the Department presented the redetermination Respondent submitted to the Department on [REDACTED], where he failed to disclose any drug-related convictions by any household members and a [REDACTED], redetermination where he denied that anyone in the household had any felony drug-related convictions. However, Respondent’s failure to disclose the LTP’s felony drug-related convictions does not establish that he was aware of them. There was no evidence presented that Respondent knew of the LTP’s convictions. Accordingly, the Department has failed to establish by clear and convincing evidence that Respondent intended to commit an IPV by withholding information concerning the LTP’s convictions. Therefore, the Department has failed to establish that Respondent committed an IPV concerning his FAP case.

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. Clients are disqualified for 10 years for an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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. 16.

As discussed above, the Department has not established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification from his receipt of FAP benefits on the basis of IPV.

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 an FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged that Respondent was over-issued FAP benefits in the amount of \$ [REDACTED] during the fraud period because both he and the LTP, the two members of their FAP group, were disqualified from receiving FAP. As discussed above, the Department has failed to establish that Respondent had two felony drug-related convictions. Therefore, the Department failed to establish that he was a disqualified member of his FAP group. However, because the LTP had two drug-related felony convictions as of [REDACTED], the LTP was a disqualified member of Respondent's FAP group and her needs should have been excluded from the calculation of Respondent's FAP eligibility and benefit amount. BEM 212 (July 2014 and October 2015), pp. 8-9. The LTP pleaded guilty to her second felony drug-related conviction on [REDACTED] [REDACTED] the day after Respondent submitted his [REDACTED], redetermination. Taken into consideration the 10-day reporting period, the 10-day processing period, and the 12-day negative action notice period, the FAP OI period should have begun [REDACTED]. BAM 105, p. 10; BAM 720, p. 7. Therefore, from [REDACTED], Respondent was eligible for FAP benefits for a single-person FAP group during the fraud period.

The Department presented evidence that Respondent was issued monthly FAP benefits for a two-person FAP group [REDACTED] of \$ [REDACTED] which is the maximum benefits available to a two-person FAP group with no net income, and monthly FAP benefits for a one-person FAP group from [REDACTED] [REDACTED] [REDACTED] of \$ [REDACTED] which is the maximum monthly benefit allotment for a one-person FAP group with no net income. RFT 260 (October 2014 and October 2016), p. 1. Because Respondent was eligible for FAP benefits for only a single-person FAP group, he was eligible for \$ [REDACTED] in monthly FAP benefits. Because he received \$ [REDACTED] in FAP benefits for [REDACTED], he was not over issued any FAP benefits those months. However, he was over issued \$ [REDACTED] for each month from [REDACTED] [REDACTED] the first month of the FAP OI, to [REDACTED], the difference between the \$ [REDACTED] in monthly FAP benefits he received and the \$ [REDACTED] in monthly FAP benefits he was eligible to receive. Therefore, the was over issued \$ [REDACTED] (\$ [REDACTED] in over issued monthly FAP benefits times the 20 months from [REDACTED]).

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for over-issued FAP benefits 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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to reduce the FAP OI amount to \$ [REDACTED] and initiate recoupment and/or collection procedures in accordance with Department policy for the amount of \$ [REDACTED] less any amounts already recouped and/or collected, for the period [REDACTED].



ACE/jaf

Alice C. Elkin
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]