



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: May 16, 2017  
MAHS Docket No.: 17-000696  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [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 April 19, 2017, from Lansing, 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 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 an application for assistance dated October 14, 2013, the Respondent acknowledged his duties and responsibilities including the duty to report any drug-related felony convictions. Exhibit A, pp 13-25.

2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. Respondent acknowledged under penalties of perjury that his application for assistance was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 24.
4. Respondent reported on his October 14, 2013, application for assistance that he had had not been convicted of any drug-related felonies. Exhibit A, p 17.
5. Respondent failed to report to the Department that on June 8, 1998, he pled guilty to Possession of a Controlled Substance Less Than 25 Grams. Exhibit A, pp 10-12.
6. Respondent failed to report to the Department that on April 14, 2014, he pled guilty to Possession of a Controlled Substance Less Than 25 Grams. Exhibit A, pp 28-32.
7. On December 17, 2014, the Michigan Administrative Hearing System (MAHS) issued an order upholding the Department's closure of Respondent's Food Assistance Program (FAP) benefits because he had been convicted of more than one drug-related felony occurring after August 22, 1996. Exhibit A, pp 33-36.
8. On May 4, 2015, Respondent applied for Food Assistance Program (FAP) benefits and his signature on the application for is an acknowledgement of his duties and responsibilities to accurately report his circumstances to the Department. Exhibit A, pp 37-56.
9. Respondent acknowledged under penalties of perjury that his May 4, 2015, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 56.
10. Respondent failed to report on his May 4, 2015, application for assistance whether he had been convicted of any drug-related felonies occurring after August 22, 1996. Exhibit A, p 54.
11. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from June 1, 2014, through October 31, 2014. Exhibit A, p 26.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from May 4, 2016, through December 31, 2016. Exhibit A, p 27.
13. On January 13, 2017, 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.

14. The Department's OIG filed a hearing request on January 13, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
15. This was Respondent's first established IPV.
16. 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**

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (April 1, 2016), p 11. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (April 1, 2016), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

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.

On an application for assistance dated October 14, 2013, the Respondent acknowledged his duties and responsibilities including the duty to report any drug-related felony convictions. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that his application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported on his October 14, 2013, application for assistance that he had not been convicted of any drug-related felonies.

Respondent failed to report on his October 14, 2013, application for assistance that he had been pled guilty on June 8, 1998, to Possession of a Controlled Substance Less Than 25 Grams. Later, on April 14, 2014, Respondent would plead guilty to a second drug-related felony and he failed to report this conviction to the Department in a timely manner. If Respondent had reported his April 14, 2014, conviction then the Department would have closed his FAP benefits by the benefit period after May 6, 2014. Respondent remained an active FAP recipient from June 1, 2014, through October 31, 2014. The Department then closed Respondent's FAP benefits, and this closure was upheld on December 17, 2014, by the Michigan Administrative Hearing System (MAHS). Respondent was not eligible for any of the FAP benefits he received from

June 1, 2014, through October 31, 2014, and he received a \$ [REDACTED] overissuance of FAP benefits.

On May 4, 2015, Respondent re-applied for FAP benefits. Respondent acknowledged on this application for benefits that he acknowledged under penalties of perjury that his application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete.

However, Respondent's May 4, 2015, application for assistance did not contain information that was true or complete because he failed to report that he had been convicted of more than one drug-related felony with each occurring after August 22, 1996. Respondent received FAP benefits from May 4, 2015, through December 31, 2016, but would not have been eligible for any of those benefits if he had reported his history of drug-related felony convictions to the Department. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits from May 4, 2015, through December 31, 2016.

### **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.*

On an application for assistance dated October 14, 2013, Respondent acknowledged his duties and responsibilities including the duty to report any drug-related felony convictions to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that his application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete.

However, the information Respondent reported on his October 14, 2013, application for assistance was not true or complete. Respondent had failed to report that on June 8, 1998, he had pled guilty to Possession of a Controlled Substance Less Than 24 Grams. If Respondent had reported this conviction to the Department he could have remained eligible for FAP benefits with an authorized representative managing his benefits. When Respondent pled guilty to another drug-related felony on June 8, 1998, Respondent was no longer eligible for FAP benefits and would have been permanently disqualified if he had reported his history of drug-related felonies.

On May 4, 2015, Respondent re-applied for FAP benefits. Respondent was aware that having more than one drug-related felony conviction made him ineligible for FAP benefits. On December 17, 2014, Respondent was notified in a hearing decision issued by the Michigan Administrative Hearing System (MAHS) that he was not eligible for FAP benefits. Since Respondent was aware of the policy and its application to his circumstances, the omission of his criminal history from his May 4, 2015, must have been and intentional act to prevent the Department of obtaining accurate information.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally concealed his history of having more than one drug-related felony conviction for the purposes of becoming eligible for and maintaining his eligibility for FAP benefits that he would not have been eligible for otherwise.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720,

p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.

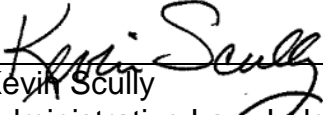
The Department has established an Intentional Program Violation (IPV).

### **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 Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED]
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 Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

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]