



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 30, 2017
MAHS Docket No.: 17-001373
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 was present for the hearing and represented himself.

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 changes in criminal justice disqualifications.
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 (January 2016), pp. 12-13; ASM 165 (August 2016), pp. 1-2.

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.

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 his FAP benefits because he failed to notify the Department of his prior drug-felony convictions in which both offenses occurred after August 22, 1996.

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 (July 2014), p. 2.

First, the Department presented Respondent's court documents in which it argued that Respondent had been convicted of two felony-drug convictions on or about [REDACTED], and [REDACTED]. [Exhibit A, pp. 60-64.]

Second, the Department presented Respondent's online application dated [REDACTED], to show that the Respondent was aware of his responsibility to report changes as required. [Exhibit A, pp. 9 and 11-40.] In the application, Respondent marked "no" to the question that asked if he had been convicted of a drug-related felony. [Exhibit A, p. 14.]

Third, the Department presented Respondent's online application dated [REDACTED] and his redetermination received on [REDACTED], which were submitted throughout the alleged fraud period. [Exhibit A, pp. 41-59.] In these documents, Respondent marked "no" to the question that asked if he had been convicted of a drug felony and/or convicted more than once. [Exhibit A, pp. 44 and 58.]

Fourth, the Department presented Respondent's Electronic Benefit Transfer (EBT) history for the period of [REDACTED]. [Exhibit A, pp. 65-68.] Several of Respondent's transactions were "swiped," which meant that the EBT card had to be present during the transaction and that his Personal Identification Number (PIN) had been used. [Exhibit A, pp. 65-68.]

Fifth, the OIG agent presented a signed letter from him dated [REDACTED], in which he conducted an Electronic Payment Processing and Information Control (EPPIC) inquiry of Respondent's EBT card. [Exhibit B, p. 1.] The EPPIC system is where the Department can check the status of a previous card and if it has been replaced. See BAM 401E (July 2014), p. 14. The OIG agent wrote the following: (i) his last EBT card was issued on [REDACTED], and that this card was used thereafter starting [REDACTED]; (ii) his previous EBT card was returned on [REDACTED]; (iii) after [REDACTED], the only EBT card used for Respondent was the card that was issued on [REDACTED]; and (iv) it also does not appear that this card was ever reported lost or stolen. [Exhibit B, p. 1.]

At the hearing, Respondent argued and/or made the following assertions: (i) he did not dispute his drug-related felony convictions; (ii) he stated he will take responsibility for the period of [REDACTED], but did dispute the period of [REDACTED]; (iii) he stated that for the period of [REDACTED], his FAP case was closed; (iv) he stated he went to the [REDACTED] office on [REDACTED], and was informed by the caseworker that his FAP case closed due to the Offender Tracking Information System (OTIS) (via the Department of Corrections) showing his drug-related felony disqualifications; (v) he stated that any

transactions after [REDACTED], he did not conduct and was based on identity theft; and he appeared to indicate a family member had access to all of his information (i.e., Social Security Number); and (vi) he did not have any documents showing his allegation of identity theft because this was the first time he learned of these transactions.

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits. Respondent did not dispute his two drug-related felony convictions and instead, argued that he should not be responsible for the period of [REDACTED]. The undersigned Administrative Law Judge (ALJ) will address Respondent's concerns relating to this time period in the *Overissuance* section below. But in regards to whether an IPV of his FAP benefits had been established, the undersigned finds that an IPV of his FAP benefits has been established by the Department.

First, the evidence presented that Respondent was convicted of a felony on or about [REDACTED], and [REDACTED], for the use, possession, or distribution of controlled substances two or more times in separate periods and in which both offenses occurred after August 22, 1996. [Exhibit A, pp. 60-64.]

Second, the Department presented evidence to show that Respondent committed the IPV. The Department presented Respondent's online applications and a redetermination submitted throughout the fraud period in which he indicated "no" to the question that asked if whether he was convicted of a drug felony, even though the evidence established that he was convicted of two or more drug felonies. [Exhibit A, pp. 14, 44, 58, and 60-64.] As such, Respondent committed an IPV of his FAP benefits when he intentionally withheld his criminal justice disqualification information. This would have made Respondent permanently disqualified from FAP benefits because he was convicted of two or more drug-related felony convictions in separate periods and in which both offenses occurred after August 22, 1996. See BEM 203, p. 2.

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; BEM 708 (October 2016), p. 1. Clients are disqualified for ten 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. 16. 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. BEM 708, p. 1. 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

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. 8.

As previously stated, Respondent should have been permanently disqualified from FAP eligibility because he was convicted of two or more drug-related felony convictions in separate periods and in which both offenses occurred after August 22, 1996. BEM 203, p. 2. However, at the hearing, Respondent argued that he should not be responsible for the period of [REDACTED] because he was informed by his caseworker that his FAP case was closed. Respondent further argued that any transactions conducted on or after [REDACTED], he did not conduct and was based on identity theft. Respondent claimed that he did not have any documents showing his allegation of identity theft because this was the first time he learned of these transactions.

In response, the evidence indicated that Respondent's FAP group size was one during the fraud period/OI period, which meant Respondent was the only eligible group member to use his EBT card. [Exhibit A, pp. 13, 43, 55, and 69-71.] On [REDACTED], the OIG agent wrote a letter stating he reviewed the EPPIC system, which showed that Respondent's last EBT card was issued on [REDACTED], and that this card was used thereafter and that it also does not appear that this card was ever reported lost or stolen. [Exhibit B, p. 1.] In fact, the Department presented Respondent's EBT history showing that several transactions were "swiped" on or after [REDACTED], ongoing, which meant that the EBT card had to be present during the transaction and that his PIN had been used. [Exhibit A, pp. 65-68.]

Based on the foregoing information and evidence, the Department established by a preponderance of evidence that Respondent did receive an OI of FAP program benefits in the amount of \$ [REDACTED] for the period of [REDACTED]. Respondent failed to present any documented evidence showing that he was informed by the caseworker that his FAP case closed on or about [REDACTED], or of his allegation of identity theft. Instead, the Department presented credible evidence showing that Respondent's FAP case was active as of [REDACTED] [REDACTED] [REDACTED] [REDACTED], and that he used his EBT card to make purchases during the period in which he stated he did not. As stated previously, the evidence indicated that Respondent's FAP group size was one, which meant that the Respondent was the only eligible group member to use his EBT card. Thus, the undersigned finds Respondent's claim highly suspicious that he did not conduct any of the transactions on or after [REDACTED], when several of the transactions were "swiped," which meant that the EBT card had to be present during the transactions conducted and that his PIN had been used. [Exhibit A, pp. 65-68.] Thus, it is found that Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program for the period of [REDACTED], because this was the period he was not eligible to receive benefits due to his criminal justice disqualification.

In establishing the OI amount, the Department presented Respondent's benefit summary inquiry showing that he was issued FAP benefits by the State of Michigan from [REDACTED], which totaled \$ [REDACTED] [Exhibit A, pp. 69-71.] Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits.

DECISION AND ORDER

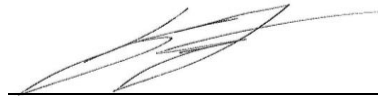
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program 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, less any amount already recouped and/or collected.

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

EJF/jaf



Eric J. Feldman
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]