



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 25, 2017
MAHS Docket No.: 17-004386
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 March 23, 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 Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
3. Should Respondent be disqualified from receiving FAP benefits?

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 March 20, 2017, 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. [Exhibit A- p. 27.]
4. On an application for assistance dated April 7, 2016, the Respondent acknowledged his duties and responsibilities, including the duty to report any drug-related felony convictions. [Exhibit A, pp. 14 and 19.]
5. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement. [Exhibit A, p. 14.]
6. Respondent acknowledged under penalty of perjury that his application for assistance, submitted on April 7, 2016, was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. [Exhibit A, p. 19.]
7. On the application, the Respondent's response to the questions regarding felony drug-related convictions was "no". (Exhibit A, p. 14.)
8. The Department failed to present competent evidence that Respondent had two felony drug-related convictions. Respondent's conviction from 2005 was for attempt delivery/manufacture cocaine. However, the second judgement presented at the hearing was for a different individual and not the Respondent. [Exhibit A, pp. 23-26.]
9. The Department's OIG indicates that the time period it is considering as the fraud period (fraud period) is May 1, 2016 to November 30, 2016.
10. The Department alleges that during the fraud period Respondent was issued a total of \$ [REDACTED] in FAP benefits by the State of Michigan but was entitled to \$0.00 in such benefits.
11. The Department alleges that during the fraud period Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
12. This was Respondent's first alleged FAP IPV.
13. On March 20, 2017, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] total overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). (Exhibit A, pp. 5-8.)

14. A notice of hearing was mailed to Respondent at the last known address and 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 \$500.00 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 (1/1/16), p. 12-13.

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 (10/1/16), p. 8; 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. 8 (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.

The Department has the burden of establishing by clear and convincing evidence that 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, 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).

In this case, the Department alleges that Respondent committed an IPV because he failed to disclose that he had two or more felony drug-related convictions. Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2011 and October 2015), p. 1. Effective October 1, 2011, 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 August 22, 1996, or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2.

In support of its contention that Respondent failed to report his felony drug-related convictions, the Department presented (i) the application Respondent submitted on April 7, 2016; (ii) register of actions from the ██████ County Circuit Court showing felony drug-related convictions and (iii) a benefits summary inquiry showing that Respondent received FAP benefits during the fraud periods. Upon closer inspection of the October

5, 2007, register of actions, it became apparent the named individual involved was not the Respondent. [Exhibit A- pp. 23-26.]

The statutory grounds cited for the convictions in the register of actions do not establish that Respondent had two or more felony drug-related convictions. [Exhibit A- pp. 23-26.] One of the register for actions, submitted for the hearing, is for someone other than Respondent and therefore does not contain information pertinent to this matter. When the Respondent applied for benefits the October 1, 2011, drug-related convictions policy was inapplicable to him, for disqualification purposes, because he did not have at least two felony drug-related convictions. In the application, Respondent certified that the information he provided was true and acknowledged understanding that he could be prosecuted for fraud and be required to repay any benefits wrongfully received based on the information he provided or failed to provide [Exhibit A, p. 19.] Respondent acknowledged his duties and responsibilities including the duty to report any drug-related felony convictions when he applied for FAP benefits on April 7, 2016. [Exhibit A, p. 19.] On the application the Respondent indicated that he did not have any felony drug-related convictions. The Respondent pled guilty to attempt controlled substance delivery/manufacture (cocaine), less than 50 grams. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement. [Exhibit A, p. 14.]

The Department's failed to demonstrate the Respondent had two or more felony drug-related convictions. Since the Respondent did not have two or more felony drug-related convictions he was not required to report same to the Department. Under these circumstances, it is found that the Department did not establish by clear and convincing evidence that Respondent committed an IPV in connection with 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. 15-16; BEM 708 (10/1/16), 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. 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. 17. 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/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 the Respondent is not subject to disqualification from 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 overissued FAP benefits totaling \$ [REDACTED] during the fraud period. The Department presented a benefits summary inquiry showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. [Exhibit A, p. 27.] As stated above, the Respondent is not disqualified for benefits on the basis of IPV. The Department has not shown by a preponderance of the evidence that there was an overissuance of program benefits in this case.

Thus, the Department is not entitled to recoup and/or collect \$ [REDACTED] from Respondent for FAP benefits issued to him between May 1, 2016 and November 30, 2016.

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 program benefits in the amount of [REDACTED] from the following program(s): FAP.

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



DM/nr

Denise McNulty
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]