



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: June 30, 2017
MAHS Docket No.: 16-013859
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

**AMENDED HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

Following Petitioner's request for a hearing, 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).

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge Lynn M. Ferris and mailed on [REDACTED], which is hereby **AMENDED** to correct errors in the decision as specified in the Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. All Findings of Fact contained in the original Hearing Decision dated [REDACTED] remain unchanged and are incorporated herein by reference, except paragraphs 2, 6 and 7, which are amended as follows:
2. The OIG has requested that Respondent be disqualified from receiving program benefits.

6. The Department's OIG indicates that the time periods it is considering the fraud period are [REDACTED]; and [REDACTED], (fraud period).

7. During the fraud period, [REDACTED] Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; during the fraud period [REDACTED], the Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0 in such benefits during the two fraud time periods.

3. The Conclusions of Law and Decision and Order contained in the Hearing Decision dated [REDACTED], are replaced in their entirety by the following Conclusions of Law and Decision and Order.

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 (1/1/16), pp. 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 (January 1, 2016), p. 1; 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.

BEM 203 provides as that recipients of Food Assistance are disqualified from receiving benefits after two drug-related felony convictions:

FIP and FAP

1st Offense

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole:

- FIP benefits must be paid in the form of restricted payments.
- Receipt of FAP benefits requires an authorized representative.

2nd Offense

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(October 1, 2015), p. 2. Originally effective October 11, 2011.

In this case, in support of its contention that Respondent committed an IPV, the Department presented a redetermination completed by Respondent on [REDACTED] wherein he answered “yes” to the question has anyone been convicted of a drug-related felony, and “no” to the question convicted more than once. A Redetermination was completed on [REDACTED], at which time [REDACTED], the Respondent’s mother, was noted as his Authorized Representative; and again, the Respondent answered “yes” to the question ever convicted of a drug-related felony and “no” to the question ever convicted more than once. Exhibit A, p. 27. In an application dated [REDACTED], the Respondent answered the question convicted of a drug felony “no” and convicted more than once he answered “no.” Exhibit A, p. 32. A note on the application indicates that Respondent is part of a substance abuse treatment center and that he was homeless and completing a drug program. Exhibit A, pp. 28, 33 and 38.

In addition, the Department provided evidence which demonstrated that Respondent had been convicted of two drug-related felonies after August 22, 1996. The Department presented a Register of Actions for the [REDACTED] County [REDACTED] Circuit Court indicating that Petitioner was convicted of a drug-related felony on [REDACTED]. Exhibit A, p. 59. The Respondent was also convicted of a drug-related felony on [REDACTED], in the [REDACTED] County [REDACTED] Circuit Court. Exhibit A, p. 60. The Respondent was also convicted of a drug-related felony on [REDACTED], in the [REDACTED] County [REDACTED] Circuit Court. Exhibit A, p. 61. Based upon the evidence presented, the Respondent was ineligible for FAP benefits after the second felony drug-related conviction on [REDACTED].

Given the fact that the applications were submitted after the three convictions occurred, it is found that the Department has established an IPV and that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits by clear and convincing evidence.

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, (October 1, 2015), p. 15; Clients are disqualified for 10 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. 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.

In this case, the Department satisfied its burden of showing by clear and convincing evidence that the Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a disqualification under the FAP program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. Individuals convicted of certain crimes, such as trafficking and drug-related felonies; probation or parole violators; and fugitive felons are not eligible for FAP or SDA assistance. BEM 203 (October 2015), p. 1.

In this case, the Department is seeking an OI related to benefits issued for two periods of time. The Department's OIG indicates that the time periods it is considering the fraud period are [REDACTED]; and [REDACTED]
[REDACTED]

The Department alleged that the OI amount is \$ [REDACTED]. The Department presented Respondent's Benefit Summary Inquiry which showed that Respondent was issued FAP benefits in the amount of \$ [REDACTED] during the two fraud periods when he received FAP benefits and was not eligible at that time due to his prior drug-related felony convictions. See Exhibit A, pp. 63-65.

Respondent did not appear at the hearing. Therefore, Respondent failed to refute the evidence presented, which revealed that he had been convicted of at least two drug-related felonies since August 22, 1996. Additionally, 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, p. 2. Had the Department been aware of Respondent's two drug-related felonies at the time of application, the application for FAP benefits would have been denied. Accordingly, the Department established that Respondent was not entitled to benefits and as such, received an OI of FAP benefits in the amount of \$ [REDACTED] during the fraud period.

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 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.

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

LMF/jaf



Lynn M. Ferris
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]