



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: June 27, 2017
MAHS Docket No.: 16-018037
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 May 31, 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 December 8, 2011, the Respondent acknowledged her duties and responsibilities including the duty to report any drug-related felony convictions. Exhibit A, pp 10-33.

2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. On her December 8, 2011, application, Respondent acknowledged under penalties of perjury that her application for assistance was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 29.
4. On her December 8, 2011, application for assistance, Respondent reported to the Department that she had been convicted of a drug-related felony after August 22, 1996, but denied having been convicted of more than one drug-related felony. Exhibit A, p 27.
5. On an application for assistance dated February 29, 2012, the Respondent acknowledged her duties and responsibilities including the duty to report any drug-related felony convictions. Exhibit A, pp 34-57.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. On her February 29, 2012 application, Respondent acknowledged, under penalties of perjury that her application for assistance was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 53.
8. On her February 29, 2012, application for assistance, Respondent reported to the Department that she had been convicted of a drug-related felony after August 22, 1996, but denied having been convicted of more than one drug-related felony. Exhibit A, p 51.
9. On February 10, 2013, Respondent pled guilty to Possession of Cocaine Less Than 25 Grams based a July 31, 2002, offense date. Exhibit A, pp 58-62.
10. On November 13, 2009, Respondent pled guilty to Possession of a Controlled Substance Less Than 50 Grams based on a November 25, 2008, offense date. Exhibit A, pp 63-67.
11. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from December 8, 2011, through January 31, 2013. Exhibit A, pp 68-70.
12. On December 8, 2016, 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.
13. The Department's OIG filed a hearing request on December 8, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.

14. This was Respondent's first established IPV.

15. 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

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 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 applications for assistance dated December 8, 2011, and February 29, 2012, the Respondent acknowledged her 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 on each of her applications that her application forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported to the Department on both of her applications for assistance that she had been convicted of a drug-related felony occurring after August 22, 1996, but denied having been convicted of more than one drug-related felony.

On February 10, 2013, Respondent pled guilty to Possession of Cocaine Less Than 25 Grams based on a July 31, 2002, offenses date. On November 13, 2009, Respondent pled guilty to Possession of a Controlled Substance Less Than 50 Grams based on a November 25, 2008, offense date. Respondent failed to report to the Department that she had been convicted of more than one drug-related felony with each occurring after August 22, 1996. If Respondent had reported her history of drug-related felonies to the Department she would have been permanently disqualified from FAP. Respondent received FAP benefits totaling \$ [REDACTED] from December 8, 2011, through January 31, 2013, but would not have been eligible for any of those benefits if she had been disqualified from FAP. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits.

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.*

Respondent acknowledged her duties and responsibilities on two separate applications for assistance including the duty to accurately report her circumstances to the Department including her history of 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 her applications for assistance forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported to the Department on each of her applications for assistance that she had been convicted of one drug-related felony, which would have allowed her to remain eligible for FAP benefits.

However, the information Respondent reported to the Department with respect to her history of drug-related felonies was neither true nor complete. Respondent failed to report to the Department that she had been convicted of more than one drug-related felony with each occurring after August 22, 1996. This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to accurately report her history of drug-related felony convictions for the purposes of becoming eligible for and maintaining her eligibility for FAP benefits that she 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



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]