



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 12, 2017
MAHS Docket No.: 16-019226
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 Rules 111 and 1003 of the Michigan Administrative Hearing System Uniform Hearing Rules, Mich Admin Code, R 792.10111 and R 792.11003. After due notice, a telephone hearing was held on May 22, 2017, from Detroit, Michigan. The Department was represented by ██████████ ██████████, 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) and Mich Admin Code, R 792.10134.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 December 27, 2016, 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 FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report his felony drug convictions.
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 (fraud period) is May 1, 2014 to July 31, 2015.
7. The Department alleges that during the fraud period Respondent was issued \$██████ in FAP benefits by the State of Michigan but was entitled to \$0 in such benefits.
8. The Department alleges that during the fraud period Respondent received an OI in FAP benefits in the amount of ██████.
9. This was Respondent's first alleged FAP IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US 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 October 1, 2014, 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 (January 2016), p. 5.

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 his reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or his 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 because he failed to disclose that he had two drug-related convictions. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (January 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. The offense must have as an element the possession, use or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and (11). The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

In support of its contention that Respondent failed to report his felony-drug convictions, the Department presented (i) a signed application Respondent submitted to the Department on May 24, 2011; (ii) redeterminations the Department sent Respondent on March 12, 2013 and July 15, 2014 for completion and return; (iii) a notice of case action the Department sent Respondent on September 9, 2014; (iv) register of actions concerning case no. [REDACTED] showing that Respondent pleaded guilty on February 20, 2014 to controlled substance – possession (narcotic or cocaine) less than 25 grams, MCL 333.7403 2A5; (v) register of actions concerning case no. [REDACTED] showing that Respondent pleaded guilty on June 24, 2008 to controlled substance – delivery/manufacture (narcotic or cocaine), less than 50 grams (attempt), MCL 333.7401 2A4; (vi) a benefits summary inquiry showing that Respondent received FAP benefits during the fraud period.

The cited statutory grounds for the convictions in the judgments establish that Respondent had more than one felony drug conviction. Because his felony drug convictions were after August 22, 1996, Respondent was permanently disqualified from receipt of FAP benefits as of his second felony drug conviction. However, in order to establish an IPV, the Department must show clear and convincing evidence that Respondent committed, and intended to commit, an IPV. 7 USC 273.16(e)(6).

In this case, Respondent had only one felony drug conviction at the time he completed the May 24, 2011 application. Although Respondent did not disclose his one felony drug conviction in the application, the felony drug conviction policy did not become effective until October 1, 2011. Therefore, Respondent's failure to disclose his one conviction in the May 24, 2011 application would not have made him ineligible for FAP benefits at the time of application. Although the Department presented two

redetermination forms it had sent Respondent for completion on March 12, 2013 and July 15, 2014, both of which asked Respondent to disclose if he had any drug-related felonies and, if so, whether he had more than two, the Department did not present either form completed and signed by Respondent. Therefore, there was no evidence that Respondent made any misrepresentations in those documents.

Because the Department failed to present any documents Respondent submitted to the Department in which his misrepresentation of his felony drug convictions resulted in Respondent receiving FAP benefits he was ineligible to receive, the Department has failed to present clear and convincing evidence that Respondent misrepresented or withheld information that, if properly disclosed, would have made him ineligible for FAP benefits. Under these circumstances, the Department failed to establish 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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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 failed to establish by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a one-year disqualification from his 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 a 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 ██████ during the fraud period. The Department presented a benefits summary inquiry showing that Respondent was issued ██████ in FAP benefits during the fraud period (Exhibit A, pp. 53-55). Respondent was the only member of his FAP group during the fraud period, which begins May 1, 2014. Because of his felony drug convictions, as described above, Respondent was a disqualified member of his FAP group after his second conviction on February 20, 2014. BEM 212 (October 2011 and October 2015), pp. 6-9. As the only member of his FAP group, Respondent was not eligible for any FAP benefits issued to him during the fraud period.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits 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 not** 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 in accordance with Department policy for a FAP OI in the amount of [REDACTED], less any amounts already recouped/collected, for the period May 1, 2014 to July 31, 2015.



AE/tm

Alice C. Elkin
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]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]