



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 28, 2017
MAHS Docket No.: 17-000603
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 June 21, 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 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 12 months?

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 January 10, 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.
4. On an application for assistance dated, May 6, 2015, the Respondent acknowledged his duties and responsibilities, including the duty to report any drug-related felony convictions. [Exhibit A, pp. 15 and 21.]
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. 15.]
6. Respondent acknowledged under penalty of perjury that his application for assistance, submitted on May 6, 2015, was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. [Exhibit A, p. 21.]
7. On the May 5, 2015, application, the Respondent's responses to the questions regarding felony drug-related convictions was "no". [Exhibit A, p. 15.]
8. Respondent failed to report to the Department that on February 11, 2010, he pled guilty to Controlled Substance-Delivery/manufacture Marijuana (Attempt), MCL 333.7401 (2)(D)(3). [Exhibit A, p. 39.]
9. Respondent failed to report to the Department that on April 4, 2014, he pled guilty to Controlled Substance-Delivery/manufacture Marijuana, MCL 333.7401 (2)(D)(3). [Exhibit A, p. 41.]
10. The Department's OIG indicates that the time period it is considering as the fraud period (fraud period) is May 6, 2015, to March 31, 2016.
11. 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.
12. The Department alleges that during the fraud period Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
13. This was Respondent's first alleged FAP IPV.
14. On January 10, 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. 6-9.]

15. A notice of hearing was mailed to Respondent at the last known address and 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 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 May 6, 2015; (ii) judgment of sentence from the ██████████ County Circuit Court showing that Respondent pled guilty to Controlled Substance- Delivery/manufacture Marijuana (Attempt), MCL 333.7401 (2)(D)(3), on February 11, 2010; (iii) judgment of sentence

from the ██████ County Circuit Court showing that Respondent pled guilty to Controlled Substance-Delivery/manufacture Marijuana, MCL 333.7401 (2)(D)(3), on April 4, 2014; and (iv) 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 two or more felony drug-related convictions. At the time of application for benefits, the Respondent was permanently disqualified for benefits because his felony drug convictions were after August 22, 1996, and he had two or more felony drug-related convictions at the time of his application which was after October 1, 2011. The effective date of the drug-related felony conviction policy was October 1, 2011. Respondent failed to disclose the two or more felony drug-related convictions in his applications [Exhibit A, p. 15.] 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. 21.] Respondent acknowledged his duties and responsibilities including the duty to report any drug-related felony convictions when he applied for FAP benefits on May 6, 2015. [Exhibit A, pp. 15 and 21.] Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement. [Exhibit A, p. 15.]

Respondent's failure to disclose his felony drug-related convictions on his applications was sufficient to establish that he intentionally withheld information that, if properly disclosed, would have made him ineligible for FAP benefits. Under these circumstances, it is found that the Department established 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 a 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 established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first FAP IPV, he is subject to a one-year 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 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 \$ [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. 54.] Because of his felony drug-related convictions, as described above, Respondent was a disqualified member of his FAP group during the fraud period. BEM 212 (October 2011 and October 2015), pp. 6-9. According to the May 6, 2015, application, Respondent was the only member of his FAP group during the fraud period. Because he was the only member of his FAP group, he was not eligible for any of the FAP benefits issued to him.

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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s): FAP.

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 time period of May 6, 2015, to March 31, 2016.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months** due to the first IPV.



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]