



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 21, 2017
MAHS Docket No.: 17-000711
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 Mich Admin Code, R 792.10111 and R 792.11003. After due notice, a telephone hearing was held on June 8, 2017, 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) 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 January 17, 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 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 November 16, 2015 to February 29, 2016.
7. The Department alleges that during the fraud period Respondent was issued ██████ in FAP benefits by the State of Michigan but was entitled to ██████ in such benefits.
8. At the time it requested a hearing, the Department alleged 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.

At the time it requested a hearing, the Department alleged that during the fraud period Respondent received an OI in FAP benefits in the amount of [REDACTED]. However, at the hearing, the Department clarified that it had expunged [REDACTED] in FAP benefits for February 2016 from Respondent's FAP electronic benefit card (EBT) and, accordingly, it reduced the FAP OI amount to [REDACTED]. Because the FAP OI at issue is less than the \$500 threshold for IPV and none of the exceptions for pursuing IPV's totaling less than \$500 apply in this case, the Department is not entitled to pursue an IPV against Respondent. Accordingly, there is no basis for the Department's request to disqualify Respondent from receipt of FAP benefits due to a FAP OI. BAM 720, pp. 15-16.

However, 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 because he received benefits he was ineligible to receive due to his two felony drug convictions prior to the fraud period. 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 (October 2015), p. 2.

To establish the two felony drug convictions, the Department presented printouts from the Oakland County Court Explorer database for case no. [REDACTED] and case no. [REDACTED] concerning Respondent. The printout for case no. [REDACTED] shows that Respondent pleaded guilty to controlled substance delivery/manufacture less than 50 grams, MCL 333.7401 2A4. This established a felony drug conviction as described under BEM 203. The printout for case no. [REDACTED] indicates that Respondent violated his probation on April 19, 2001 in connection with a charge of controlled substance-delivery/manufacture (narcotics), less than 50 grams. The document does not clearly indicate whether the conviction at issue is for the drug felony or the probation violation. Thus, the Department has failed to establish a second felony drug conviction. In the absence of evidence of two felony-drug convictions, the Department has failed to establish that Respondent was disqualified from FAP eligibility under BEM 203. Accordingly, the Department is not entitled to recoup and/or collect [REDACTED] from Respondent for FAP benefits it alleges were overissued 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. Because the IPV [REDACTED] threshold has not been established, the Department **has not** established that Respondent committed a FAP IPV and is subject to a FAP disqualification.
2. Respondent **did not** receive an OI of FAP program benefits.

The Department is ORDERED to delete the [REDACTED] FAP OI; cease any recoupment and/or collection proceedings; and supplement Respondent for any amounts already recouped and/or collected.

ACE/tlf



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

Via Email:

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

[REDACTED]

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