



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 9, 2017
MAHS Docket No.: 17-001749
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 [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).

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 or around [REDACTED], 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. Respondent was aware of the responsibility to report his drug related felony 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 periods it is considering the fraud periods are [REDACTED], and [REDACTED] (fraud periods).
7. The Department alleges that during the fraud periods, Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$[REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$[REDACTED].
9. This was Respondent's first alleged 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 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 (January 2016), pp.5, 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 2016), pp. 7-8; 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. 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 of the FAP because he misrepresented his circumstances on an assistance application and redetermination by failing to disclose that he had two drug related felony convictions each occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (May 2014/October 2016), pp.6-9. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July2014/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. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution of a controlled substance. 21 USC 862a(a).

The Department presented documentation including Register of Actions from the [REDACTED] Circuit Court and from the [REDACTED] County [REDACTED] Circuit Court detailing Respondent's criminal history. (Exhibit A, pp. 29-36). According to the records provided, in [REDACTED] Respondent was convicted of controlled substance-delivery/manufacture less than 50 grams in Case No. [REDACTED]. (Exhibit A, pp. 32-36). Although the Department asserted that Respondent was also convicted of a drug related felony in [REDACTED] for controlled substances – possession (narcotic or Cocaine) Less Than 25 Grams (Attempt) in Case No. [REDACTED], the documents presented for review do not clearly support the Department's position. A review of the Register of Actions presented suggests that while Respondent was charged with two counts of controlled substance crimes, Respondent pled guilty to a probation violation on [REDACTED]. The evidence presented does not sufficiently establish that Respondent was convicted of a drug related felony for the use, possession, or distribution of controlled substances in [REDACTED]. (Exhibit A, pp. 29-31). Thus, the Department did not establish that Petitioner had two drug related felony convictions each occurring after August 22, 1996.

The Department presented a redetermination that was received by the Department on [REDACTED]; however, the redetermination was unsigned, so it was unclear who completed and submitted it to the Department. (Exhibit A, pp. 10-15). Additionally, the Department presented an assistance application that was completed by Respondent and submitted to the Department on [REDACTED]. A review of the assistance applications indicates that Respondent answered "no" to the questions asking whether he had been convicted of a drug felony or whether he had been convicted of a drug felony more than once. (Exhibit A, pp. 16-28).

Although Respondent did not identify his drug related felony convictions on the assistance application he completed, the information withheld would not have made him

ineligible for FAP benefits as the Department did not establish that he had two drug related felony convictions. Thus, the Department failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Under these circumstances, the Department has not established by clear and convincing evidence that Respondent committed an IPV of the FAP.

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 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 concerning the FAP. Therefore, Respondent is **not** subject to a one-year disqualification from receipt of FAP benefits.

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 issued FAP benefits in the total amount of \$ [REDACTED] between [REDACTED] and [REDACTED] and between [REDACTED] and January 2017 and that due to his drug related felony convictions, was ineligible for any FAP benefits during this period. Although the Department presented a FAP benefit summary inquiry to support benefits issued in the amount alleged, Because, as discussed above, the Department did not establish that Respondent was ineligible for FAP benefits, and did not establish that he was subject to a permanent disqualification from the FAP, the Department is not entitled to recoup \$ [REDACTED] from Respondent, as it was not established that Respondent received a FAP OI.

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 of the FAP.

2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the \$ [REDACTED] FAP OI and cease any recoupment/collection procedures.



ZB/tlf

Zainab A. Baydoun
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]

Respondent – Via First-Class Mail:

[REDACTED]