



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.: 17-005393
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 appeared and represented herself.

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 April 4, 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 felony drug convictions.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is March 11, 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 during this time period.
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 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 (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.

In this case, the Department alleges that Respondent committed an IPV because she failed to disclose that her husband, a member of her FAP group, had more than one

felony drug-related conviction. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (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's husband had more than one felony drug conviction, the Department presented a (i) register of actions for [REDACTED] showing that Respondent's husband pleaded guilty to controlled substance-possession/analogues, MCL 333.7403 2B-A, on February 25, 2009; and (ii) an "Action In Court" retrieved from the [REDACTED] database showing that Respondent's husband pleaded guilty to controlled substance-possession of heroin, less than 25 grams, on September 18, 2014. This evidence was sufficient to establish that Respondent's husband had two felony drug convictions after August 22, 1996 and was permanently disqualified from receipt of FAP benefits after his second conviction on September 18, 2014.

In order to establish that Respondent committed an IPV by failing to disclose her husband's felony drug convictions, the Department must establish by clear and convincing evidence that she 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). Clear and convincing evidence must show that Respondent committed, and intended to commit, an IPV. 7 CFR 273.16(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 support of its contention that Respondent knew of her husband's felony drug convictions and intentionally withheld this information, the Department presented the applications Respondent submitted to the Department on March 11, 2015 and April 4, 2016, where she failed to disclose any drug-related convictions by any household members (Exhibit A, pp. 28, 48). However, Respondent's failure to disclose her husband's felony drug convictions does not establish that she was aware of them.

The Department argued that Respondent should have been aware of the convictions because she had been married to Respondent since January 2008 (Exhibit A, p. 34). At the hearing, Respondent testified that she was aware of the [REDACTED] conviction but, although she knew her husband had been brought to [REDACTED] in 2009 following an arrest, she was not aware of the [REDACTED] conviction. Although it is noted that Respondent failed to disclose in her application that her husband had at least one conviction, the disclosure of one conviction would not have disqualified Respondent's husband from the FAP group. Because there was not clear and convincing evidence that Respondent was aware of her husband's two felony drug convictions and the disclosure of one felony drug conviction would not result in FAP ineligibility, the

Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld information concerning her husband's convictions. Therefore, the Department has failed to establish that Respondent committed an IPV concerning her 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 not established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification from her 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 in the amount of █████ during the fraud period because her husband was disqualified from receiving FAP. Because, as discussed above, Respondent's husband had two drug-related felony convictions as of September 18, 2014, he was a disqualified member of Respondent's FAP group during the fraud period and his needs should have been excluded from the calculation of Respondent's FAP eligibility and benefit amount. BEM 212 (October 2015), pp. 8-9.

The Department established that during the fraud period Respondent had been issued FAP benefits for a three-person FAP group consisting of herself, her husband, and her child. Once Respondent's husband is removed as a disqualified FAP group member due to his felony drug convictions, Respondent's FAP group size is reduced to two qualified FAP group members. The Department presented FAP OI budgets for each month during the fraud period showing the amount of FAP benefits Respondent would have been eligible to receive if her group had had only two members rather than three. Because Respondent's net income was █████ for each month of the fraud period, the Department properly determined that, based on a two-person FAP group, Respondent was eligible for █████ in monthly FAP benefits, the maximum for a two-person FAP group. See RFT 260 (October 2014 and October 2015), p. 1. Because she was issued █████ each month during the fraud period, she was overissued █████ for each month

from April 2015 to February 2016. The Department acknowledges that Respondent was underissued [REDACTED] in March 2015. Therefore, Respondent was overissued [REDACTED] in FAP benefits, the product of the [REDACTED] overissued for each of the eleven months between April 2015 and February 2016, less the [REDACTED] underissuance.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits from March 2015 to February 2016.

At the hearing, Respondent expressed concerns that she was not in a financial position to repay any FAP OI. Under MCL 400.43a(4), the Department may waive recovery of an overpayment if the recovery would result in undue hardship to the public assistance recipient, as determined by the Department. BAM 725 (January 2017), p. 17, provides that the Department can reduce or eliminate an overissuance if it is determined that a household's economic circumstances are such that the overissuance cannot be paid within three years. The request for a policy exception must be made by the Recoupment Specialist to the Fraud and Recoupment Administration office outlining the facts of the situation and the client's financial hardship, with the Department deputy director having final authorization on the determination for all compromised claims. BAM 725, p. 16. Respondent is advised to appeal to her local office for assistance.

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 program benefits in the amount of [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for the FAP OI amount of \$ [REDACTED], less any amounts already recouped and/or collected, for the period March 11, 2015 to February 29, 2016.

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

Petitioner

[REDACTED]
[REDACTED]
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CC: [REDACTED]
[REDACTED]