



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: July 13, 2017
MAHS Docket No.: 17-001645
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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130, R 400.3178, R 792.11019, and R 792.11020. After due notice, a telephone hearing was held via three-way telephone conference on July 5, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG), who participated from the Department's [REDACTED] office. Respondent appeared at her local Department office ([REDACTED]) and represented herself. OIG Agent [REDACTED] was present at the local Department office but did not participate in the hearing.

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 30, 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 August 1, 2015 to July 31, 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 son, 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. 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's son had more than one felony drug conviction, the Department presented a (i) a report from ICHAT (Internet Criminal History Access Tool), a Department-accessible database maintained by the [REDACTED], concerning the criminal history of Respondent's son, identified by name and birthdate, that showed an August 14, 2013 conviction in [REDACTED] for controlled substance-delivery/manufacture (cocaine, heroin, or another narcotic), less than 50 grams (attempt), MCL 333.7401 2A4; (ii) a register of actions for the [REDACTED] showing that on August 10, 2012 Respondent pleaded guilty to controlled substance-delivery/manufacture (narcotic or cocaine), less than 50 grams (attempt), MCL 333.7401 2A4; (iii) a printout from the eAccess database maintained by the [REDACTED] showing that Respondent's son pleaded guilty to controlled substance-delivery/manufacturing, less than 50 grams, on July 1, 2015. This evidence was sufficient to establish that Respondent's son had more than one felony drug conviction after August 22, 1996 and was permanently disqualified from receipt of FAP benefits after his second conviction in August 2013.

In order to establish that Respondent committed an IPV by failing to disclose her son'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.

At the hearing, Respondent credibly testified that she was not aware of her son's criminal history. Although the Department presented the redeterminations Respondent submitted on November 18, 2014 and November 30, 2015 showing that Respondent did not respond to the questions concerning whether anyone in the household had any felony drug convictions (Exhibit A, pp. 16, 22), Respondent's failure to respond to the questions concerning the felony drug convictions of household members does not establish that she was aware of them. Therefore, the Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld information

concerning her son's convictions. As such, the Department has not shown an IPV concerning Respondent's 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 son was disqualified from receiving FAP. Because, as discussed above, Respondent's son had more than one drug-related felony conviction as of August 1, 2015, he was a disqualified member of Respondent's FAP group and his needs should have been excluded from the calculation of Respondent's FAP eligibility and benefit amount during the fraud period. BEM 212 (October 2015), pp. 8-9.

Although Respondent had argued that her son was not a member of her FAP group, in her redetermination, she included him as a household member and indicated that she purchased and prepared food with him (Exhibit A, pp. 13, 19). Also, the Department's benefit summary inquiry, which showed the amount of FAP benefits Respondent received monthly during the fraud period, showed that Respondent received █████ for each month during the fraud period in which she did not have earned income █████ is the maximum monthly FAP allotment for a two-person FAP group. RFT 260 (October 2015), p. 1. Thus, the Department established that during the fraud period Respondent had been issued FAP benefits for a two-person FAP group consisting of Respondent and her son.

Once Respondent's son is removed as a disqualified FAP group member due to his felony drug convictions, Respondent's FAP group size is reduced to one. 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 one member rather than two. Because Respondent's net income was \$0 between August 2015 and May 2016, the Department properly determined that, based on a one-person FAP group, Respondent was eligible for [REDACTED] in monthly FAP benefits, the maximum for a one-person FAP group, during those months. See RFT 260 (October 2014 and October 2015), p. 1. Because she was issued [REDACTED] each month between August 2015 and May 2016, she was overissued [REDACTED] each of those months. Therefore, she was overissued a total of \$ [REDACTED] between August 2015 and May 2016. Based on her net income, she was eligible for a total of [REDACTED] for June 2016 and July 2016 rather than the [REDACTED] she received those months. RFT 260, p.7. Thus, she was overissued a total of [REDACTED] for June 2016 and July 2016.

Therefore, Respondent was overissued [REDACTED] in FAP benefits during the fraud period, the sum of the \$ [REDACTED] overissued from August 2015 to May 2016 and [REDACTED] overissued for June 2016 and July 2016. As such, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits from August 1, 2015 to July 31, 2016.

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 August 1, 2015 to July 31, 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

DHHS

[REDACTED]
[REDACTED]
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CC:

[REDACTED]
[REDACTED]