



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: July 11, 2017
MAHS Docket No.: 17-002094
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on July 6, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent's aunt, [REDACTED] [REDACTED] [REDACTED] represented Respondent as his Authorized Hearing Representative (AHR) at the hearing. Respondent also appeared and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

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 requested a hearing on February 6, 2017, to establish that Respondent received an OI of benefits as a result of having allegedly committed an IPV.

2. On December 11, 1998, Respondent was sentenced to the [REDACTED] [REDACTED] [REDACTED] for a drug-related felony conviction (Controlled Substances-Possession (narcotics or Cocaine) Less than 25 Grams (attempt) MCL 333.7403(2)(A)(5)). [Exhibit 1, p. 21].
3. On November 21, 2003, Respondent was sentenced to the [REDACTED] [REDACTED] [REDACTED] for Violation of Probation concerning a drug-felony conviction Controlled Substances-Possession (narcotics or Cocaine) Less than 50 Grams MCL 333.7412(A)(4). [Exhibit 1, p. 22].
4. In 2007, Respondent had a subdural hematoma, which resulted in amnesia and temporary confinement in a nursing home and assisted living center. [Petitioner Hearing Testimony].
5. Respondent applied for and received FAP benefits issued by the Department beginning in or around June 2013. [Exhibit 1, pp. 30-35].
6. On July 15, 2013, Respondent signed and later submitted, a redetermination (DHS-1010) form where he denied having any drug related felony convictions. Respondent also indicates that he has memory problems on the form. [Exh. 1, p. 14].
7. In June 2015, Respondent submitted a redetermination form (DHS-1010) which denied that he had had any drug related felony convictions. This form indicated that Respondent had an Authorized Representative ([REDACTED] [REDACTED] [REDACTED]) [Exh. 1, pp. 15-20].
8. FAP recipients are required to provide the Department with correct and complete information about themselves and everyone in the household. Recipients are also required to report changes as required by applicable Department policy and/or law.
9. Respondent may have had a mental impairment that would limit the understanding or ability to fulfill this requirement.
10. The Department's OIG indicates that the time period it is considering the fraud period is from July 1, 2013, to March 31, 2016 (fraud period).
11. During the alleged fraud period, 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. [Exh. 1, pp. 30-35].
12. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] [Exh. 1, pp. 30-35].
13. This was Respondent's first alleged FAP IPV.
14. The OIG has requested that Respondent be disqualified from receiving program benefits.

15. 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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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-.3011.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**

- the total OI 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.

See BAM 720, p. 12.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. 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 and 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).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

In this case, the Department alleges that Respondent committed an IPV when he failed to properly report to the Department that he had two or more felony drug convictions in order to receive an OI of FAP benefits. Respondent's AHR, on the other hand, argued that Respondent did not have two or more drug-related felony convictions and that he had only one. According to Respondent's AHR, Respondent had 1 felony drug conviction and had 1 conviction for a probation violation.

For FAP, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. The person is disqualified as long as the violation occurs. BEM 203 (10-1-2015), p. 1. [Emphasis added].

BEM 203, p. 1, also provides that a person who has been convicted of a felony (first offense) for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole:

- FIP benefits must be paid in the form of restricted payments.
- Receipt of FAP benefits requires an authorized representative.

Department policy also provides that an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996. BEM 203 p. 2. [Emphasis added].

Department policy also requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (7-1-2015), pp. 10-11. Specifically, benefit recipients must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In the instant matter, the Department must show by clear and convincing evidence that Respondent intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. In order to meet this burden, the Department must clearly show that Respondent did, in fact, have two or more drug felony convictions that occurred after August 22, 1996 and that he intentionally misrepresented this fact to the Department in order to receive an OI of FAP benefits.

Based on the record in this matter, the Department has provided documentation that Respondent has one drug-related felony conviction that occurred in 1997 and that he was convicted of a probation violation in 2000. [Exh. 1, pp. 21-28]. However, this record also shows that Respondent violated the terms of probation, but that there is no evidence that he violated probation during the fraud period.

Based upon the record in this matter, Respondent has not clearly shown that Respondent had two or more felony drug convictions that occurred after August 22, 1996. [Exh. 1, pp. 21-28]. The record does not show by clear and convincing evidence that Respondent intentionally failed to report, or that he intentionally misrepresented, that he had two or more drug-related felony convictions in order to receive FAP benefits. In fact, this record does not clearly show that Respondent actually had two or more drug-related felony convictions. The credible testimony and record evidence shows that Respondent had a mental injury that affected his memory and that he had an authorized representative at the time. Accordingly, this Administrative Law Judge finds that Respondent had an apparent physical or mental impairment that limits his understanding or ability to fulfill the reporting responsibilities. Accordingly, this Administrative Law Judge finds that the clear and convincing evidence on the whole record does not show that Respondent committed an IPV because he intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

Disqualification

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is “[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor.” BPG, p. 20. A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

A disqualification period is defined as, “[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist.” BPG, p. 20. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16. However, as indicated above, a person who is convicted of a felony for the “use,

possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996.” BEM 203, p. 2.

In the instant matter, the Department has not shown that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent is personally disqualified from FAP benefits for one year.

As indicated above, the Department has not clearly shown on this record that Respondent has two or more drug-related felony convictions such that he is permanently disqualified from FAP under BEM 203. This Administrative Law Judge does not find; however, that Respondent does not have two or more drug-related felony convictions that occurred after August 22, 1996. However, the instant record does not show this to be the case.

Overissuance

The Department must also show that Respondent received an overissuance (OI) of FAP benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (1-1-2016) p. 1. There are three different types of OIs: (1) agency errors, (2) client errors, and (3) CDC Provider errors. See BAM 700, pp. 4-7. An agency error OI is caused by incorrect action (including delayed or no action) by DHHS staff or department processes. BAM 700, p. 4. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p. 5.

Based on the above analysis, the Department has not shown that Respondent received an OI of FAP benefits. The Department’s evidence that a FAP OI occurred was not supported by the evidence on the record. Because the Department has failed to establish that Respondent receive an OI of FAP benefits, the Department may not recoup the alleged 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. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department shall not initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits for a period of 12 months due to the first established IPV violation in the instant matter.

IT IS FURTHER ORDERED that Respondent's permanent and/or lifetime disqualification from FAP benefits due to Respondent allegedly having two or more drug felonies that occurred after August 22, 1996 has not been supported by clear and convincing evidence on this record.¹

IT IS SO ORDERED.

CAP/md



C. Adam Purnell
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

¹ The Department is not forever barred from bringing this action again in the future.

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]