



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 20, 2017
MAHS Docket No.: 17-005002
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 July 18, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and testified.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On January 6, 2009, Respondent was convicted of a drug related felony.
2. On May 11, 2015, Respondent was convicted of another drug related felony.
3. On August 31, 2015, Respondent submitted and signed an Assistance Application (DHS-1171). In the Assistance Application (DHS-1171) Respondent stated that he only been convicted of one drug related felony. (Department Exhibit A page 28)

4. On February 10, 2017, Respondent submitted and signed an Assistance Application (DHS-1171). By the question "Has anyone ever been convicted of a drug-related felony that occurred after August 22, 1996?" both the yes and no boxes are checked. There is also a hand written note which states "Client has one in case doing FEE referral to confirm." (Department Exhibit A page 48)
5. Respondent had no apparent mental impairment that would limit his understanding or ability to provide true and accurate information in the applications.
6. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report that he had been convicted of two separate drug related felonies after August 22, 1996.
7. In accordance with Bridges Administration Manual (BAM) 720 September 1, 2015 to February 28, 2017 has correctly been determined as the over-issuance period associated with this Intentional Program Violation (IPV).
8. During the over-issuance period, Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
9. This is Respondent's 1st Intentional Program Violation (IPV).

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances 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 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications, at page 4 states:

DRUG-RELATED FELONY

FIP and FAP

1st Offense

A person who has been convicted of a felony 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.

2nd Offense

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996.

During this hearing Respondent testified he knew he had one drug-related felony conviction. He testified that he was not sure if the other conviction was a felony or not. Respondent testified that on the August 31, 2015 application he marked the one and had questions about the other. Respondent also testified that on the February 10, 2017 application both boxes were checked by the Case worker and he told her he had one but did not know about whether the second one was a felony or not.

Respondent's explanation does not make sense. If the case worker knew he had at least one drug-related felony, she would not mark the "no" box. The far more plausible explanation is that Respondent marked the "no" box and the case worker questioned it because he had reported at least one drug-related felony on the August 31, 2015 application.

Respondent's assertion that he did not know if he had one or two felony convictions is contradicted by his signature of both application certifying that the information on the applications was true. Respondent's testimony is not found credible.

The Department presented 2 Assistance Applications (DHHS-1171) that Respondent submitted to the Department prior to, and during, the alleged OI period. This documentation shows that Respondent misrepresented his criminal record and signed the documents certifying that the information provided was true.

This constitutes clear and convincing evidence that Respondent intentionally misrepresented his criminal record in order to receive benefits he was not eligible for. Therefore, the Department has established that Respondent committed an IPV.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.
The full standard of promptness (SOP) for change processing, per BAM 220.
The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

7 CFR § 273.16 Disqualification for intentional Program violation
(e) Disqualification Hearings (8) Imposition of disqualification penalties (i) states:

If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

In this case, the Department submitted evidence showing that Respondent submitted fraudulent applications. Therefore any benefit periods approved as a result of the fraudulent documents are properly part of the over-issuance period.

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented evidence showing that the State of Michigan issued Respondent a total of \$ [REDACTED] in Food Assistance Program (FAP) benefits during the over-issuance period.

Respondent was not eligible for any Food Assistance Program (FAP) benefits during the over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

DECISION AND ORDER

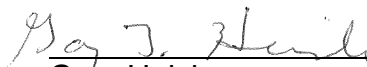
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional

Program Violation (IPV) which resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHELD.

GH/nr



Gary Heisler
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]

Petitioner

[REDACTED]

Respondent

[REDACTED]