



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 14, 2017
MAHS Docket No.: [REDACTED] 17-007912
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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, 42 CFR 431.230(b), 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 period it is considering the fraud period is [REDACTED] (fraud period).
7. The Department alleges that during the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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. 5.12-13; ASM 165 (August 2016).

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 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 failed to timely report to the Department that he had two drug related felony convictions. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (January 2014), pp.7-11. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), p. 1. Effective [REDACTED], 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 [REDACTED] or (ii) the individual was convicted two or more times and both offenses occurred after [REDACTED]. 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 Respondent's Internet Criminal History Access Tool (ICHAT) summary which details Respondent's criminal history as maintained by the Michigan State Police, including other aliases used. According to the ICHAT summary, Respondent had two drug related felony convictions after [REDACTED], specifically in May 2013 in Case No. [REDACTED] in the [REDACTED] Circuit Court for controlled substance-delivery/manufacture (cocaine, heroin, or another narcotic) less than 50 grams; and in [REDACTED] in Case No. [REDACTED] in the [REDACTED] Circuit Court for controlled substance-possession/analogues. (Exhibit A, pp. 47-52). The cited statutory grounds for the convictions in the documents presented by the Department establish that Respondent had two felony drug convictions. Both convictions have possession, use or distribution of a controlled substance as an element.

The Department also presented an assistance application completed by Respondent and submitted to the Department on [REDACTED], on which he accurately reports that he has been convicted of a drug related felony. (Exhibit A, pp. 10-39). While this application was sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances, it does not establish by clear and convincing evidence that Respondent committed an IPV. The Department also provided a redetermination completed by Respondent and submitted to the Department on [REDACTED], after his second drug felony conviction. A review of the redetermination indicates that Respondent again accurately reported that he had been convicted of a drug related felony and further that he had been convicted more than once. (Exhibit A, pp. 40-46).

After a thorough review of the evidence presented, although the Department established that Respondent had two drug related felony convictions, the Department has failed to establish that Respondent intentionally withheld that information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

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.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV. As such, Respondent is not subject to disqualification under the FAP for 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 [REDACTED] because he was a disqualified member of his FAP group and not eligible for FAP benefits issued to him between [REDACTED] based on a failure to timely report his felony drug convictions. As discussed above, an individual with two or more felony drug convictions after [REDACTED] is permanently disqualified from receipt of FAP benefits. BEM 203, p. 2. The Department presented evidence that Respondent had two felony drug convictions after [REDACTED]. Thus, the Department established that because of his criminal record, Respondent was ineligible for FAP benefits during the fraud period. Additionally, the Department properly determined that the first month in the OI period would be [REDACTED], based on Respondent's second drug felony conviction of [REDACTED], and in light of the Department's reporting and processing changes policies.

A review of the FAP benefit summary inquiry presented by the Department establishes that the State of Michigan issued [REDACTED] in FAP benefits to Respondent during the fraud period. (Exhibit A, pp. 22-23). Because, as discussed above, Respondent was ineligible for FAP benefits, as he was subject to a criminal justice disqualification from the FAP, the Department is entitled to recoup [REDACTED] from Respondent, which is the difference between the amount of FAP benefits actually issued to him and the amount he was eligible to receive during the fraud period.

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.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amount that has already been recouped or collected.



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]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]