



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 15, 2017
MAHS Docket No.: 17-000595-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

**DECISION AND ORDER OF REHEARING
FOR INTENTIONAL PROGRAM VIOLATION**

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Petitioner's timely Request for Rehearing of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on June 27, 2017, and mailed on June 28, 2017, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Rehearing was mailed on [REDACTED].

After due notice, a telephone hearing was held on October 17, 2017, from Lansing, Michigan. Respondent personally appeared and testified. The Department of Health and Human Services (Department) was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 35 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits for one year?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED], to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits. [Dept Exh. 1, 3].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 35].
4. Respondent was aware of the responsibility to report previous drug convictions as evidenced by his not answering the questions when asked if he had previous drug convictions on the assistance application received by the Department on [REDACTED]. [Dept. Exh. 10-29].
5. Respondent credibly testified that he had more than two felony drug convictions. [Testimony of [REDACTED]].
6. When asked if he had a disability on his [REDACTED], assistance application, Respondent did not answer the questions. [Dept. Exh. 25].
7. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to complete the Redetermination accurately and truthfully. [Dept. Exh. 25].
8. On [REDACTED], Respondent pled guilty to Controlled Substance - Delivery/manufacture (narcotic or Cocaine) 50 to 449 grams. [Dept. Exh. 30-32].
9. Respondent pled guilty on [REDACTED], to Controlled Substance - Delivery/manufacture (narcotic or Cocaine) 50 to 449 grams. [Dept. Exh. 33-34].
10. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], through [REDACTED]. [Dept. Exh. 3].

11. 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 \$ [REDACTED] in such benefits during this time period. [Dept. Exh. 3, 35].
12. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]. [Dept. Exh. 3].
13. This was Respondent's first alleged IPV. [Dept. Exh. 3].

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 January 1, 2016, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- Food Assistance Program trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program, State Disability Assistance, Child Development and Care, Medicaid and Food Assistance Program programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or

- the alleged Intentional Program Violation involves Food Assistance Program 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, pp 12-13 (1/1/2016).

Criminal Justice Disqualifications

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (10/1/2015). 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. BEM 203, p 2.

In this case, Respondent was convicted of two felonies for Controlled Substance – Delivery/manufacture (narcotic or Cocaine) 50 to 449 grams on [REDACTED], and [REDACTED].

Intentional Program Violation

Suspected Intentional Program Violation means an overissuance 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.

An Intentional Program Violation 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, when Respondent was asked if he had previous drug convictions on his [REDACTED], assistance application, Respondent did not answer the questions. Respondent testified that the worker knew he had drug convictions when she asked him to sign the application. A review of Respondent's application shows Respondent did not answer the questions. Therefore, the Department has established by clear and

convincing evidence that Respondent intentionally withheld information for the purpose of maintaining FAP benefits.

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 Family Independence Program, FAP, or State Disability Assistance, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 18. 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 17.

In this case, this is Respondent's first IPV. As a result, Respondent will be disqualified from receiving FAP benefits for one year.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

In this case, Respondent received \$ [REDACTED] in FAP benefits. Because Respondent had two felony drug convictions after August 22, 1996, Respondent was not eligible for FAP benefits. Therefore, Respondent received an OI of \$ [REDACTED] for the fraud period of [REDACTED], through [REDACTED].

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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for one year.

VLA/bb



Vicki Armstrong
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]