



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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[REDACTED]

Date Mailed: November 16, 2017
MAHS Docket No.: 17-005453
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 July 24, 2017, from Detroit, Michigan. The Department was represented by Kelli Owens, 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 ██████████ 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report his felony drug convictions and to answer accurately and completely criminal justice disqualification questions.
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 March 1, 2015, to January 31, 2016, (fraud period).
7. During the fraud period, Respondent was issued \$1,652 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 in FAP benefits in the amount of \$1,652.
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 United States Postal Service 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), pp. 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 because he failed to report his two felony drug convictions. Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (January 2015 and October 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (January 2015 and July 2015), pp. 5, 8-11.

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 be classified as a felony by the law of the State and 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).

In support of its contention that Respondent failed to report his felony-drug convictions, the Department presented: (i) a redetermination Respondent submitted to the Department on ██████████ 2015; (ii) a Register of Actions from ██████████ County Circuit Court showing that Respondent pled guilty on ██████████, 1997, to attempted delivery/manufacture of a controlled substance, MCL 333.7401 2A4; (iii) a Register of Actions from ██████████ County Circuit Court showing that Respondent pled guilty on ██████████ 1998, to delivery/manufacture of a controlled substance less than 50 grams, MCL 333.7403 2A4; and (iv) a benefits summary inquiry showing that Respondent received FAP benefits from March 2015 to January 31, 2016.

The cited statutory basis supporting the convictions in the judgments establish that Respondent had two felony drug convictions, each having as an element the delivery or manufacture of a controlled substance. Because both felony drug convictions were after August 22, 1996, Respondent was permanently disqualified from receipt of FAP benefits following his second conviction in ██████████ 1998. Respondent had two felony drug convictions at the time his February 28, 2015, redetermination was submitted but he denied having any felony drug convictions (Exhibit A, p. 14). In his redetermination, Respondent certified that the information he provided was true and acknowledged understanding that he could be prosecuted for fraud and be required to repay any benefits wrongfully received by him based on the information he provided (Exhibit A, p. 15).

Respondent's failure to report that he had two felony drug convictions on his application established that he intentionally withheld information that, if properly disclosed, would

have made him ineligible for FAP benefits. Under these circumstances, the Department established by clear and convincing evidence that Respondent committed an IPV in connection with his 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 FIP, FAP or SDA, 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 established by clear and convincing evidence that Respondent committed an IPV. Therefore, the Department is entitled to a finding that Respondent is subject to a disqualification from receiving FAP benefits. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from his receipt of FAP benefits on the basis of an 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 (July 2014 and January 2016), p. 6; BAM 705 (July 2014 and January 2016), p. 6.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$1,652 during the fraud period. Respondent was a FAP group of one member. The Department presented a benefits summary inquiry showing that Respondent was issued \$1,652 in FAP benefits during the fraud period (Exhibit A, pp. 18-19). Because of his two drug felony convictions, Respondent was disqualified from receiving FAP benefits during the fraud period. As a result, Respondent was not entitled to any of the FAP benefits issued to him during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$1,652 from Respondent for overissued FAP benefits for 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** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent **did** receive an OI of FAP benefits in the amount of \$1,652.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,652 in accordance with Department policy, less any amounts already recouped/collected.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of 12 months.

LF/jaf



Lynn M. Ferris

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

MDHHS-Wayne-41-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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