



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 3, 2017
MAHS Docket No.: 17-009552
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Laura Gibson

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 November 1, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared for the hearing and represented herself.

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) and the Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and FIP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and FIP 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 June 22, 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 and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to accurately report her circumstances to the Department and to disclose drug-related felony convictions of group members.
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 FAP fraud period is November 16, 2012 to September 30, 2015 (FAP fraud period).
7. During the FAP 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
9. The Department's OIG indicates that the time period it is considering the FIP fraud period is November 1, 2012 to January 31, 2013 (FIP fraud period).
10. During the FIP fraud period, Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FIP benefits in the amount of [REDACTED]
12. This was Respondent's first alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

In this case, the Department alleges that Respondent committed an IPV because she failed to disclose that [REDACTED], a mandatory group member, had two drug-felony convictions. Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2012 and January 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (November 2012 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 FIP benefits 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.

In support of its contention that Respondent failed to report the drug-felony convictions of Mr. Ray the Department presented: (i) applications Respondent submitted to the Department on November 16, 2012 and January 6, 2015; (ii) a redetermination Respondent submitted to the Department on October 9, 2014; (iii) a Judgment of Sentence from [REDACTED] showing that [REDACTED] pled guilty on January 12, 1999 to possession of a controlled substance less than 25 grams, MCL 333.7403 2A5; (iv) a Judgment of Sentence from [REDACTED] showing that [REDACTED] pled guilty on February 8, 1999 to possession of a controlled substance less than 25 grams, MCL 333.7403 2A5; (v) a Judgment of Sentence from [REDACTED] showing that [REDACTED] pled guilty on August 15, 2005 to possession of a controlled substance less than 25 grams, MCL 333.7403 2A5; (vi) a benefits issuance summary showing that Respondent received FIP benefits from November 2012 to January 2013; and (vii) a benefits issuance summary showing that Respondent received FAP benefits from November 2012 to September 2015.

The cited statutory basis supporting the convictions in the judgments establish that Mr. [REDACTED] had two felony drug convictions. Because both felony drug convictions were after August 22, 1996, [REDACTED] was permanently disqualified from receipt of FAP and FIP benefits following his second conviction in February 1999.

In order to establish that Respondent committed an IPV by failing to disclose [REDACTED] drug-felony convictions, the Department must 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 support of its contention that Respondent knew of ██████ drug-felony convictions and intentionally withheld this information, the Department presented the applications and redeterminations Respondent submitted where she failed to disclose any drug-related convictions by any household members (Exhibit A, pp. 18, 52, 60). However, Respondent's failure to disclose ██████ drug-felony convictions does not establish that she was aware of them. Respondent provided credible testimony that she was unaware of ██████ drug-felony convictions, and that the convictions had occurred before Respondent met him. Thus, insufficient evidence was presented that Respondent was aware of ██████ convictions and intentionally failed to report those convictions. Therefore, the Department has failed to establish by clear and convincing evidence that Respondent intended to commit an IPV by withholding information concerning ██████ convictions, and has failed to establish that Respondent committed an IPV concerning her FAP and FIP cases.

Disqualification

A client who is found to have committed a 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 failed to satisfy its burden of showing that Respondent committed a FAP or FIP IPV. Therefore, Respondent is not subject to a disqualification from FAP or FIP benefits.

Overissuance

In this case, the Department alleges that, because Respondent failed to report Mr. ██████ felony drug convictions, her group received FAP and FIP benefits she was ineligible to receive. 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 or FIP 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 2012 and July 2014), p. 6; BAM 705 (July 2012 and July 2014), p. 6.

FAP OI

In this case, the Department alleged that Respondent's FAP group, which consisted of Respondent, Mr. ██████, and their child, was issued FAP benefits in the amount of ██████ between November 2012 and September 2015. Because of ██████ two felony drug convictions, as described above, he was a disqualified member of

Respondent's FAP group during the FAP fraud period. BEM 212 (November 2012 and July 2014), pp. 8-9. Therefore, Mr. [REDACTED] would be removed from the FAP group, but his income would continue to be fully budgeted in the determination of the group's FAP eligibility and benefit amount. BEM 550 (February 2012 and July 2015), pp. 2, 3.

The Department presented FAP OI budgets for each month during the OI period showing the FAP benefits Respondent's FAP group was eligible to receive if [REDACTED] was removed as a FAP member due to his felony drug disqualification, and benefits were issued on behalf of a FAP group consisting of the remaining household members. A review of the FAP OI budgets shows that the overissuance is based on Respondent's FAP group size being reduced to two.

A review of the budgets shows that when [REDACTED] is removed from the FAP group, the remaining group members were eligible to receive [REDACTED] in FAP benefits (Exhibit A, pp. 105-130). Therefore, the Department is entitled to recoup [REDACTED] from Respondent, which is the difference between the amount of FAP benefits actually issued to her and the amount the group was eligible to receive during the fraud period.

FIP OI

In this case, the Department alleged that Respondent's group was overissued FIP benefits in the amount of [REDACTED] during the FIP fraud period because [REDACTED] was a disqualified group member due to his felony drug convictions.

Because of [REDACTED] two felony drug convictions, he was a disqualified member of the FIP group during the FIP fraud period. BEM 203, p. 2. The Department presented FIP OI budgets for each month during the fraud period showing the FIP benefits Respondent's FIP group was eligible to receive if [REDACTED] was removed as a FIP member due to his felony drug disqualification, and benefits were issued on behalf of a FIP group consisting of the remaining household members. A review of the FIP OI budgets properly showed that Respondent's FIP benefits should have been based on a FIP group with two certified group members.

The certified group must be in financial need to receive benefits. A client establishes financial need for a monthly FIP grant if an issuance deficit test shows that the certified FIP group's payment standard exceeds the household's budgetable income by at least [REDACTED] BEM 518 (November 2012), pp. 1-2. The payment standard for a two-person certified FIP group is [REDACTED]. RFT 210 (January 2009), p. 1.

The FIP OI budgets show that, when Respondent's FIP certified group size was reduced to two, based on the household's net income, Respondent's group was eligible for FIP benefits in the amount of [REDACTED] for December 2012 and [REDACTED] for January 2013. Respondent's group was not eligible for any FIP benefits for November 2012. Respondent received FIP benefits in the amount of [REDACTED] in November 2012, [REDACTED] in December 2012, and [REDACTED] in January 2013. Thus, Respondent was overissued \$ [REDACTED] during the FIP fraud period, the difference between the FIP benefits Respondent received, and the FIP benefits Respondent was eligible to receive.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FIP benefits from November 1, 2012 to January 31, 2013.

During the hearing, Respondent raised the issue of her responsibility for repayment of any FAP or FIP overissuance. Respondent alleged that, because she was not the group member with the disqualifying drug-felony convictions, she should not be the group member responsible for the overissuance. The undersigned notes that repayment of an overissuance is the responsibility of anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred. BAM 725 (August 2012), p. 1. In this case, [REDACTED] was a disqualified adult member of the FAP and FIP group. Thus, the Department is entitled to recoup and/or collect the overissuance of [REDACTED] from either Respondent or [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, 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 FAP benefits in the amount of [REDACTED]
3. Respondent **did** receive an OI of FIP benefits in the amount of [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the FAP OI of [REDACTED] and for the FIP OI of [REDACTED], in accordance with Department policy, less any amounts already recouped and/or collected.



LG/kl

Laura Gibson
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



Respondent via USPS

