



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 14, 2017
MAHS Docket No.: 17-010290
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M T Marler

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 6, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] Lead 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 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 benefits for the FAP?

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 July 7, 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 truthfully and accurately answer all questions on his application for FAP benefits including whether or not he had been convicted of any felony drug offense.
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 January 14, 2016 through March 31, 2016 and November 17, 2016 through February 28, 2017 (fraud period).
7. 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.
8. The Department alleges that Respondent received an OI in 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 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 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), pps. 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 (October 2016), p. 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 misrepresented his circumstances by failing to disclose that he had two or more drug related felony convictions each occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (March 2013, July 2013), p. 5, 6. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (June 2013, July 2013), p. 1. 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. 1, 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). The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

The Department presented documentation including a Register of Actions from the [REDACTED] and a court records search result from [REDACTED] detailing Respondent's criminal history. (Exhibit A, pp. 11-15). According to the records provided, Respondent had two drug related felony convictions after August 22, 1996. On June 19, 2013 in Case No. [REDACTED], the Respondent pled guilty to controlled substance-delivery or manufacturing of narcotic or cocaine less than 50 grams and on September 9, 2013 in Case No. [REDACTED], the Respondent pled guilty to controlled substance-delivery or manufacturing of narcotic or cocaine less than 50 grams. The cited statutory grounds for the convictions in the documents presented by the Department establish that Respondent had two felony drug convictions. The convictions have possession, use, or distribution of a controlled substance as an element.

In support of its contention that Respondent committed an IPV, the Department presented two applications for benefits signed by Respondent and submitted to the Department on January 14, 2016 and November 17, 2016. The Respondent answered no to the question of whether anyone in his household had been convicted of a drug related felony and to the question of whether anyone had more than one drug related felony conviction on each application. (Exhibit A, pp. 16-39). The application clearly instructs Respondent to provide true and complete information, as well as the penalties for failing to do so.

Therefore, because Respondent did not truthfully identify his drug related felony convictions on the applications, the Department's evidence establishes by clear and convincing evidence that Respondent was advised of his responsibility to accurately report his circumstances, and that Respondent intentionally withheld information that if

properly disclosed would have made him ineligible for FAP benefits. Under these circumstances, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP.

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 satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV therefore he is subject to a one-year disqualification under the FAP.

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 issued FAP benefits in the amount of \$ [REDACTED] from January 14, 2016 through March 31, 2016 and \$ [REDACTED] from November 17, 2016 through February 28, 2017 and that due to his drug related felony convictions he was ineligible for \$ [REDACTED] of FAP benefits during this period. A review of the Respondent's FAP Benefit Issuance Summary presented by the Department supports benefits issued in the amount alleged. (Exhibit A, pp. 42).

Turning to the first period from January 14, 2016 through March 31, 2016, the Respondent had a group size of one. Since there were no other eligible group members to receive benefits even if the Respondent was ineligible or disqualified, the Department may recoup \$ [REDACTED] 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.

Moving to the next OI period from November 2016 through February 2017, the Department did not provide sufficient evidence to establish the Respondent's group size, eligibility for remaining members, or benefit rate for the period from November 2016 through February 2017. Testimony from the Department indicates that the Respondent had a group size of two for the period from November 2016 through February 2017, but the IG-150 FAP Benefit Issuance Summary indicates that for the same period, the group size was four. (Exhibit A, p. 41). While the Department provided Food Assistance Issuance Tables, a Benefit Issuance Summary, and an OI

budget worksheet, this evidence is insufficient. The Department should have provided detailed budgets for each month wherein there was more than one group member who would remain eligible for benefits despite a disqualification or ineligibility of the Respondent. As a result, it is impossible to determine what the group should have received in FAP benefits despite a disqualification or ineligibility of the Respondent. Since the Department was unable to provide sufficient evidence to establish what the group should have received or the value of an OI for the Respondent for the period from November 2016 through February 2017, the Department may not recoup or collect any FAP benefits issued from November 2016 through February 2017.

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 of the FAP.
2. Respondent **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to reduce the FAP OI to \$ [REDACTED] for the period January 14, 2016 through March 31, 2016, and initiate recoupment/collection procedures in accordance with Department policy less any amounts already recouped or collected.

The Department is ORDERED to delete and cease any recoupment or collection procedures for the period from November 2016 through February 2017.

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



AM/kl

Amanda Marler
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

A large black rectangular redaction box covering the email address.

Respondent via USPS

A large black rectangular redaction box covering the USPS address.