



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 3, 2018
MAHS Docket No.: 17-012873
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 December 5, 2017, 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 Food Assistance Program (FAP) benefits?
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 August 15, 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. The Department alleges that Respondent was aware of the responsibility to completely and truthfully answer all questions in his application/redeterminations for benefits, including, but not limited to, those regarding drug felony convictions.
5. The Department alleged that 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 May 4, 2012 through May 31, 2012 and September 18, 2015 through June 30, 2016 (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.

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. 12-13.

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; 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 intentionally withheld or misrepresented information regarding convictions for drug felonies that occurred after August 22, 1996 for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility and, as such, he committed an IPV.

Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2011 and January 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (May 2012 and July 2015), p. 5 and p. 8. 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.

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. The term “distribute” means to deliver (other than administering or dispensing) a controlled substance or a listed chemical. The term “deliver” or “delivery” means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there is an agency relationship. 21 USC section 862a(a)(1) and (2); 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 applications submitted by Respondent on May 4, 2012, September 7, 2012, and September 18, 2015. (Exhibit A, pp. 25-56; pp. 57-86; pp. 87-114). In the applications, Respondent stated that he had not been convicted of a drug felony and that he had not been convicted of a drug felony more than once (Exhibit A, p. 29, p. 61, and p. 91). Under the penalty of perjury, Respondent signed the applications as confirmation that the information contained within was true and complete (Exhibit A, p. 38, p. 67, and p. 97).

In support of its allegation that Respondent committed an IPV, the Department presented an ICHAT inquiry concerning Respondent, who was identified by name and birth date. Per the ICHAT inquiry, the Department alleged that Respondent was found guilty of Felony Controlled Substance-Possession (cocaine, heroin, or another narcotic) less than 25 grams on October 15, 2002 in [REDACTED] and on May 7, 2007 in the [REDACTED] (Exhibit A, p. 14 and p. 16).

The Department OIG testified that he compared the information contained in the ICHAT inquiry to lien information that he requested from the Department’s central office; however, he stated that the lien information could not be provided in the Department’s exhibits. As the lien information was not presented, the only competent evidence to be considered as to whether Respondent had two or more qualifying convictions is the

ICHAT inquiry, which specifically states that adverse action should not be taken solely on the inquiry (Exhibit A, p. 12). The Department did not present any evidence that it made a collateral contact with the authorities from the [REDACTED] or the [REDACTED] to verify the accuracy of the information contained in the ICHAT inquiry or that any attempts were made to obtain official court records, such as the Register of Actions, or more credible documentation. The Department presented case comments in which Respondent purportedly stated that he had a drug felony conviction, but he could not recall the date of the conviction.

The Department's evidence showed that Respondent stated that he did not have any drug felony convictions; however, based on the evidence presented, the Department did not sufficiently establish that Respondent had two drug felony convictions for offenses that occurred after August 22, 1996.

Therefore, it is found that the Department failed to establish that Respondent intentionally withheld or misrepresented information regarding drug felony convictions for the purpose of establishing, maintaining, increasing, or preventing the reduction of FAP benefits or eligibility. Therefore, the Department has not established by clear and convincing evidence that Respondent committed an IPV as to his FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720 (December 2011 and October 2014), p. 12-13 and p. 15-16. 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. 12 and p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13 and p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for concurrent receipt of FAP benefits. BAM 720, p. 13 and p. 16.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV concerning his FAP benefits. Accordingly, Respondent is not subject to a 12-month disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 2011 and May 2014), 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. 6 and p. 8; BAM 715 (December 2011 and July 2014), p. 5 and p. 6; BAM 705 (December 2011 and July 2014), p. 5 and p. 6.

In this case, the Department alleged that Respondent was issued FAP benefits in the total amount of \$ [REDACTED] during the fraud period and, that due to two qualifying drug

felony convictions, he was ineligible for any FAP benefits during this period as he should have been a disqualified member of the FAP group.

The Department presented a FAP benefit issuance summary to support benefits issued in the amount alleged; however, the Department did not establish that Respondent was ineligible for FAP benefits and did not establish that he was subject to a permanent disqualification from FAP benefits based on his criminal history. Therefore, the Department is not entitled to recoup \$ [REDACTED] from Respondent as it was not established that Respondent received a FAP OI 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 as to FAP benefits.
2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the \$ [REDACTED] FAP OI and cease any recoupment/collection action.

MC/kl



Michael Crews

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

