



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 6, 2018
MAHS Docket No.: 17-010602
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 January 24, 2018, 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 July 12, 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 alleges 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 22, 2014 through April 30, 2015 and December 16, 2015 through June 30, 2016 (fraud periods).
7. During the fraud periods, Respondent was issued [REDACTED] 0 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 [REDACTED]
9. This was Respondent's first alleged FAP 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 (July 2013; October 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 2014; July 2015), p. 8.

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances, but has not violated the terms of probation or parole, is required to have an authorized representative for receipt of FAP benefits. BEM 203, p. 2. 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 22, 2014 and December 16, 2015 (Exhibit A, pp. 14-33). In the May 22, 2014 application, the Department did not have the page within the application which addressed drug felony convictions; therefore, Respondent’s answer is unknown at the time of the application. However, the Department presented case comments from May 29, 2014 in which Respondent was interviewed based on the May 22, 2014 application, which the Department indicated was incomplete. Respondent stated that he had one drug felony conviction (Exhibit A, p. 68). However, in the December 16, 2015 application, Respondent indicated that he had not been convicted of a drug felony (Exhibit A, p. 43). Under the penalty of perjury, Respondent electronically signed the application as confirmation that the information contained within was true and complete (Exhibit A, p. 49).

In support of its allegation that Respondent committed an IPV, the Department presented Judgments of Sentence from ██████████ County which showed that Respondent entered a plea of guilty to the charge of Controlled Substance-op/maintaining a lab involving methamphetamine on December 3, 2010 and Controlled Substance-possession of methamphetamine on October 8, 2010 (Exhibit A, pp. 70-71).

Here, as of May 22, 2014, Respondent had two drug felony convictions from offenses that occurred after August 22, 1996, but he only reported one conviction to the Department when interviewed on May 29, 2014. One drug felony conviction would have required Respondent to have an authorized representative for receipt of FAP benefits, but he would not have been ineligible for FAP benefits. On Respondent's December 16, 2015 application, Respondent failed to report both convictions. If this information had been properly disclosed, Respondent would have been ineligible for FAP benefits.

Therefore, it is found that the Department established that Respondent intentionally withheld or misrepresented information regarding his drug felony convictions for the purpose of establishing, maintaining, increasing, or preventing the reduction of FAP benefits or eligibility. Therefore, the Department 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 (May 2014; October 2015), 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. 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. 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. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is 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 (May 2014; October 2015), 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 (May 2014; October 2015), p. 6; BAM 705 (May 2014; October 2015), p. 6.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling ██████ during the fraud period. The Department presented a benefit issuance summary showing that Respondent was ██████ in FAP benefits during the December 16, 2015 to June 30, 2016 fraud period and ██████ in FAP benefits during the May 22, 2014 to April 30, 2015 fraud period.

Because of the two drug felony convictions, Respondent was not entitled to any benefits during the fraud period and, as such, he received an OI of FAP benefits in the amount of ██████ during the fraud period as alleged by the Department.

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 as to his FAP benefits.
2. Respondent did receive an OI of FAP benefits in the amount of ██████

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

It is FURTHER ORDERED that Respondent be disqualified from the receipt of FAP benefits for a period of 12 months based on an IPV.

MC/tm



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

Petitioner

[REDACTED]
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CC:

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