



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.: 17-010603
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 January 2, 2013 through September 30, 2014 and December 1, 2015 through November 30, 2016 (fraud periods).
7. During the fraud periods, Respondent was issued [REDACTED] 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 (October 2012; October 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (November 2012; July 2015), p. 5; 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 January 1, 2013 and November 17, 2015 (Exhibit A, pp. 11 and 41). In the application, Respondent indicated that he had not been convicted of a drug felony (Exhibit A, pp. 15 and 45). Under the penalty of perjury, Respondent electronically signed the application as confirmation that the information contained within was true and complete (Exhibit A, pp. 21 and 50).

In support of its allegation that Respondent committed an IPV, the Department presented two ██████████ County Judgments of Sentence which showed that Respondent entered a plea of guilty to the charge of Controlled Substance-Possession (narcotic or cocaine) less than 25 grams (attempt) on March 6, 2008 and Controlled Substance-use of narcotic/cocaine/methamphetamine/ecstasy on January 14, 2009 (MCL 333.7404(2)(a)) (Exhibit A, pp. 69 and 70).

However, pursuant to MCL 333.7404(2)(a), a person who violates this section as to a controlled substance classified in schedule 1 or 2 as a narcotic drug or a drug described

in section 7212(1)(h) or 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both. Ecstasy is listed in section 7212(1)(h) and 7214(c)(ii) states “any substance which contains any quantity of methamphetamine...” As such, the January 14, 2009 conviction was for a drug misdemeanor, not a drug felony.

Therefore, as of January 1, 2013, Respondent had one drug felony conviction from offenses that occurred after August 22, 1996 which he was required to report. If this information had been properly disclosed, Respondent would have been required to have an authorized representative for receipt of FAP benefits, but Respondent would not have been ineligible for FAP benefits.

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 failed to establish 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 (August 2012; October 2015), p. 12-13; 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. 13; 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. 13; p. 16.

As discussed above, the Department failed to establish 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; 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. 6; BAM 715 (July 2012; October 2015), p. 5; BAM 705 (July 2012; October 2015), p. 5.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling [REDACTED] during the fraud period. The Department presented a benefit issuance summary showing that Respondent was issued [REDACTED] in FAP benefits

during the January 1, 2013 to September 30, 2014 fraud period and \$ [REDACTED] in FAP benefits during the December 1, 2015 to November 30, 2016 fraud period.

Because the Respondent did not have two qualifying drug felony convictions, the Department failed to establish that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED] during the fraud periods 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 not established by clear and convincing evidence that Respondent committed an IPV as to his FAP benefits.
2. Respondent did not receive an OI of FAP benefits in the amount of [REDACTED]

The Department is ORDERED to delete the FAP OI of [REDACTED] in accordance with Department policy and cease any recoupment/collection procedures.

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]
[REDACTED]
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