



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 4, 2018
MAHS Docket No.: 17-015303
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 3, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent was present and represented herself.

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 12 months?

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 October 24, 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 report any felony drug convictions to the Department within 10 days.
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 November 1, 2013 through October 31, 2014 (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 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.

Overissuance

In this case, the Department requested a hearing, in part, to establish that Respondent received an overissuance of benefits. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (February 2013 and July 2013) p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1.

In this case, the Department alleges that Respondent was overissued benefits because she failed to inform the Department that her Living Together Partner (LTP) had two drug-related felony convictions, which should have resulted in his disqualification from the FAP group. 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 (October 2015), p. 2.

On October 21, 2013, Respondent submitted an application for FAP benefits. In the application, Respondent indicated her LTP did not have any drug-related felony convictions. The Department presented documentation showing Respondent's LTP had been convicted of drug-related felonies on September 21, 1998 and November 8, 2000.

The Department presented the benefit summary inquiry which shows the FAP benefits issued to Respondent based on a group size of five. As Respondent's LTP should have been disqualified from the group, the Department presented overissuance budgets showing the correct benefit amount based on the correct group size. However, the Department testified that the group size was not the only factor changed within the overissuance budgets. The Department stated that changes were made to the household's gross income, which is reflected in the budget details for each month of the fraud period. The Department provided no evidence or explanation as to why the household's gross income was changed. There was no allegation that the household's income was ever unreported or misreported. It is unclear as to why the Department modified the household income. In the absence of such evidence, the Department failed to establish that it properly calculated the overissuance amount.

Intentional Program Violation

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. 5.

Respondent was issued benefits based on a group size of five. The Department provided sufficient evidence to establish that Respondent's LTP had two drug-related felony convictions. Although the Department also provided evidence that Respondent failed to report her LTP's drug-related felonies, the Department failed to establish that they were entitled to request an IPV hearing per policy. According to BAM 720, there must be an overissuance of at least \$500. As Respondent's LTP should have been disqualified from the FAP group, it is evident there was an overissuance. However, as stated above, the Department failed to establish that it properly calculated the overissuance amount. As such, it cannot be determined that the \$500 threshold was met. Additionally, Respondent gave credible testimony that she did not report her LTP's drug-related felonies because she was not aware of the convictions. Accordingly, the Department may not proceed with imposing an IPV disqualification against Respondent.

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 not receive an OI of FAP program benefits in the amount of [REDACTED].

The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

It is FURTHER ORDERED that Respondent is not subject to disqualification from FAP benefits.

EM/cg



Ellen McLemore
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:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]