



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 15, 2018
MAHS Docket No.: 17-015641
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 2, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared at the hearing and was represented by [REDACTED] and [REDACTED], Student Attorneys for [REDACTED]. [REDACTED] MSW a social worker with the [REDACTED] also appeared. [REDACTED] also was present as an Attorney Supervisor for the Clinic.

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 (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 Food Assistance (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 October 31, 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 complete information correctly to the Department.
5. Respondent **had** an apparent mental impairment that would limit the understanding or ability to fulfill this requirement with respect to completing an application for FAP.
6. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2015 through January 31, 2017 (fraud period).
7. During the fraud period, Respondent was issued ██████████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████████
9. This was Respondent's **first** alleged IPV.

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), pp. 1, and 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 is also suspected for a client who is alleged to have trafficked FAP benefits. 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 because he failed to report his two felony drug convictions to the Department. Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015 and April 2016), pp. 5, 8-11.

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. 2.

In support of its contention that Respondent failed to report his felony drug convictions, the Department presented a redetermination(s)/application(s) dated February 13, 2015 which was presented to demonstrate the Respondent in completing the application was advised of his responsibility to advise the Department of changes and to complete the application correctly. The application did not contain any questions regarding drug felony convictions.

The Department also presented a second application dated September 13, 2016 where Respondent failed to report that he had any drug felony conviction answering "No" to the question regarding whether he had been convicted of a drug felony and "No" to the question whether he had been convicted more than once as shown in the application. See Exhibit A, p. 29. In both the applications the Respondent advised the Department that he was disabled. See Exhibit A, pp. 21 and 29.

In addition, the Department presented evidence of two felony drug convictions represented by Court documents for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] which demonstrated that the Respondent pled guilty to Controlled Substance Possess of less than 25 grams, MCL 333.27032A5 (drug felony) on April 19, 2005 and was given probation and sentenced to Drug Court and sent to rehabilitation. The Respondent subsequently violated the terms of his probation and was sentenced to serve Jail time on the original conviction. Exhibit A, p. 9-12. A second drug felony conviction occurred

on September 7, 2005 when Respondent pled guilty to Possession of Controlled Substance, Narcotic/Cocaine less than 25 grams MCL 333.74032A5. Exhibit A, pp. 14-16. The Department also presented a Benefit Issuance Summary demonstrating that Respondent received FAP benefits during the fraud period. Exhibit A, p. 40.

The Respondent receives SSI and is disabled. The Respondent testified at the hearing and credibly established that he had several mental impairments and established that a [REDACTED], his case manager was required to assist him with completing his second FAP application due to the noise level and what the Respondent describes as chaotic conditions in the Department area where he was required to complete the application. The Respondent also did not have glasses which he requires to read and which he cannot read without at the time the second application was completed. He was unaware that 2 drug felony convictions were disqualifying conditions to receipt of FAP. The Respondent testified that it was difficult for him to think clearly and his case manager completed the application. He did not recall any questions regarding his criminal record or history. The Respondent also presented treatment records regarding his mental disability which established an historical diagnosis of Schizoid Personality Disorder, paranoid personality features, Adjustment Disorder with anxious mood. The notes indicate anxiety is induced when living in society and further documents that Respondent had lived in the woods for 30 years. The Respondent's testimony of his mental problems and disability is confirmed by the Medical Evaluations provided at the hearing. See Petitioner Exhibits A-E.

The cited statutory basis supporting the convictions in the judgments establish that Respondent had two felony drug convictions after August 22, 1996 and thus Respondent was permanently disqualified from receipt of FAP benefits following his second conviction November 2004.

However, based upon the Respondent's credible testimony, it is determined that the Petitioner did not intentionally misrepresent information to the Department with any intent to deceive the Department regarding the existence of his criminal convictions for drug related felonies in order to receive Food Assistance. Therefore, it is determined that the Department has not established an Intentional Program Violation by clear and convincing evidence.

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 FIP, FAP or SDA, 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 not established by clear and convincing evidence that Respondent committed an IPV. Therefore, the Department is not entitled to a finding that Respondent is subject to a disqualification from receiving FAP benefits.

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 (October 2015 and January 2016), p. 6; BAM 705 (October and January 2016), p. 6. At the hearing it was determined that Agency Error existed due to the fact that the first application contained no questions regarding whether Respondent had ever been convicted of a drug felony and thus it was not specifically brought to his attention. Even though Agency Error existed due to the application deficiency, this error does not excuse an overissuance which occurred because at the time of the September 27, 2016 application the Respondent had in fact 2 drug felony convictions and thus was disqualified at the time of the application and ineligible for Food Assistance. See BAM 705 (January 2016), p 1.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling [REDACTED] during the fraud period as set forth in the Finding of Facts paragraphs 6 and 7. The Respondent was a FAP group of one member. The Department presented a Benefits Issuance Summary Inquiry showing that Respondent was issued [REDACTED] in FAP benefits during the fraud periods (Exhibit A, p. 40). Because of his two drug felony convictions, Respondent was disqualified from receiving FAP benefits during the fraud periods.

Thus, the Department is entitled to recoup and/or collect and OI of [REDACTED] from 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** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.

LF/tm



Lynn M. Ferris

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]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner Representative

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner Representative

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: [REDACTED]
IPV-Recoupment Mailbox