



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 6, 2018
MAHS Docket No.: 18-002035
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on June 5, 2018, from Lansing, Michigan. The Department was represented by Martin O'Sullivan, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On December 9, 1997, Respondent was convicted of a drug-related felony, possession of narcotics under 25 grams contrary to MCL 333.7403(2)(a)(v).
2. On October 19, 2010, Respondent was convicted of a drug-related felony, delivery of narcotics under 50 grams contrary to MCL 333.7401(2)(a)(iv).
3. On June 9, 2016, Respondent completed an online application for assistance, including FAP benefits.

4. In the application Respondent completed, the Department asked Respondent “Convicted of a drug felony?” and “Convicted of a Drug Felony more than once?” in the section on “Questions about the people in your home.”
5. Respondent answered “No” to both of the questions about drug-related felonies.
6. Respondent acknowledged that she had received and reviewed the “information booklet explaining how to apply for and receive help: Things You Must Do, Important Things to Know, Information About Your Household That Will Be Shared.”
7. Respondent certified that she read and understood her rights and responsibilities.
8. The application instructed Respondent to report changes within 10 days of the date of the change.
9. Respondent completed additional applications for assistance on November 7, 2016, November 9, 2016, and December 11, 2016.
10. The Department asked Respondent whether she had any drug-related felony convictions on each of these applications, and Respondent did not disclose her drug-related felony convictions on any of them.
11. Respondent did not have any apparent physical or mental impairment which would limit her understanding or ability to fulfill her reporting requirement.
12. On March 7, 2018, the Department’s OIG filed a hearing request to establish an IPV.
13. A notice of hearing was mailed to Respondent at her last known address and it was returned by the United States Postal Service as undeliverable.
14. The Department’s OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), 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.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and (2) The client was clearly and correctly instructed regarding his or her reporting responsibilities, and (3) The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (January 1, 2016) 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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 1, 2016), p. 11. The Department established that Respondent knew or should have known that she was required to answer completely and truthfully. The Department established that Respondent had two or more drug-related felony convictions, that Respondent knew or should have known that she had been convicted of these felonies, and that Respondent intentionally misrepresented information to the Department when she responded "No" on her application in response to the question "Convicted of a drug felony?"

Respondent's misrepresentation caused the Department to overissue benefits to Respondent. Respondent misrepresented that she did not have any drug-related felony convictions, and the Department paid Respondent benefits based on the information she misrepresented. Had Respondent not misrepresented her drug-related felony convictions, the Department would have found Respondent disqualified from receiving benefits pursuant to BEM 203 (October 1, 2015). If the Department would have found Respondent disqualified from receiving benefits, Respondent's benefits would have been reduced. Thus, Respondent's misrepresentation caused an overissuance.

Respondent's misrepresentation to the Department must be considered an intentional misrepresentation to obtain FAP benefits since Respondent knew or should have known that reporting her convictions to the Department would have caused her to be disqualified from receiving FAP benefits. The Department established that Respondent

did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

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. 15-16. In general, clients are disqualified for 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

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.

IT IS ORDERED THAT Respondent shall be disqualified from FAP benefits for a period of 12 months.

JK/nr



Jeffrey Kemm
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) 763-0155; 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

OIG
PO Box 30062
Lansing, MI
48909-7562

Washtenaw County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Raina Nichols
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Respondent

[REDACTED]