



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 27, 2018
MAHS Docket No.: 18-002579
Agency No.: [REDACTED]
Petitioner: OIG
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 June 21, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by himself. [REDACTED] appeared as a witness.

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 March 21, 2018, 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 **may not have been** aware of the responsibility to report criminal justice disqualification information to the department including drug felony convictions.
5. Respondent **had** an apparent mental impairment that would limit the understanding or ability to fulfill this requirement. The Respondent is diagnosed with Bipolar Disorder and Schizophrenia and has a 9th grade education, has difficulty with reading and comprehension. He did not complete the applications himself and does not have a computer. See also Exhibit A, p. 111 (note written for Respondent by his mother, witness [REDACTED]).
6. The Department's OIG indicates that the time period it is considering the fraud period is October 22, 2012 through March 31, 2013 (first period) (OI amount [REDACTED]); March 13, 2014 through December 31, 2014, (2nd period)(OI amount [REDACTED]) and November 1, 2016 through April 30, 2017 (3rd fraud period) (OI amount [REDACTED]). (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 [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 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.

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 2017), 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 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 application(s) and redeterminations dated October 22, 2012, March 13, 2014 and October 22, 2016 where he 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 redetermination/application(s). See Exhibit A, pp. 16, 46 and 51. In addition, the Department presented evidence of two felony drug convictions represented by Court documents for the [REDACTED] [REDACTED] Court which demonstrated that the Respondent was convicted of drug felony by guilty plea on July 7, 2006 and August 17, 2011. Exhibit A, pp. 102, and 104-105. The Department also presented a Benefit Issuance Summary demonstrating that Respondent received FAP benefits during the fraud period. Exhibit A, pp. 107-110.

The cited statutory basis supporting the convictions in the judgments establish that Respondent had two felony drug convictions. Because both felony drug convictions were after August 22, 1996, Respondent was permanently disqualified from receipt of FAP benefits following his second conviction in August 2011. Respondent had two felony drug convictions at the time his application(s) and redetermination(s) were submitted. Respondent credibly testified at the hearing that he did not personally complete any of the applications but had to request friends assist him because he has a 9th grade education, and suffers from bipolar disorder and schizophrenia for which he receives treatment. He further testified he has also recently applied for disability

assistance. He has difficulty with reading and comprehending and understanding what he is reading. Respondent with the help of his mother who wrote out the statement for Respondent, signed an affidavit that he has always has someone else to complete the applications for him because he has difficulties with reading and does not have a computer. Thus, under these circumstances with these impairments it is determined that Respondent did not intentionally misrepresent his drug felony convictions and thus there is no IPV established. When applying for other benefits in the future, the Respondent is advised to seek assistance from the Department when completing any further paperwork or application.

Respondent's failure to report that he had two felony drug convictions on his redetermination and/or applications based upon the evidence did not established that he intentionally withheld information that, if properly disclosed, would have made him ineligible for FAP benefits. Under these circumstances, the Department not established by clear and convincing evidence that Respondent committed an IPV in connection with his FAP benefits.

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.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling ██████████ for the 3 fraud periods 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 ██████████ in FAP benefits during the fraud period. Because of his two drug felony convictions, the Respondent was disqualified from receiving FAP benefits after the second drug felony

conviction on August 7, 2011 and thus was not entitled to any FAP benefits he received at any time because all his applications were made after the second drug felony conviction which barred Respondent from receiving FAP benefits during the fraud periods.

Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent for overissued FAP benefits for the fraud period.

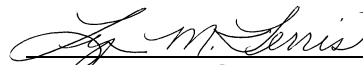
DECISION AND ORDER

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) Food Assistance.

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

LF/cg



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) 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

Via Email:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]