



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 9, 2018
MAHS Docket No.: 18-000843
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 July 5, 2018, from Lansing, Michigan. The Department was represented by Jonetta Greene, 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)(4).

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 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 September 2, 2006, Respondent was charged with crimes in St. Clair County. Respondent was bound over to circuit court on a felony on September 19, 2006.
2. On July 16, 2014, Respondent was charged with crimes in St. Clair County. Respondent pled guilty to a crime in district court on July 29, 2014.
3. On September 24, 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application for assistance, the Department asked

Respondent whether she had been “convicted of a drug felony.” Respondent answered “no.”. Respondent signed her application and thereby affirmed that she understood the questions in the application and that she provided true and complete information.

4. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or her ability to answer the questions on her application truthfully and completely.
5. The Department approved Respondent for FAP benefits based on the information she provided in her application. The Department issued FAP benefits to Respondent from September 2017 through January 2018.
6. The Department conducted an investigation of Respondent’s case and determined that Respondent had two or more felony drug convictions which she had not reported. The Department determined that it overissued Respondent \$806.00 in FAP benefits from September 2017 through January 2018 because she had two or more felony drug convictions which made her ineligible for benefits.
7. On January 31, 2018, the Department’s OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
8. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
9. A notice of hearing was mailed to Respondent at her last known address and it was not returned by the United States Postal Service 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), 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

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 2016), p. 1. When a client group receives

more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, the Department did not present sufficient evidence to establish that Respondent received more FAP benefits than she was entitled to receive. The Department alleged that Respondent received more FAP benefits than she was entitled to receive because she had two or more felony drug convictions which made her ineligible for benefits as of the date of her second felony drug conviction. The Department did not present sufficient evidence to establish that Respondent had two felony drug convictions as alleged.

The Department presented the register of actions for two separate cases out of St. Clair County, but they provided insufficient information to establish that Respondent had been convicted as alleged. One of the register of actions did not provide any information about a conviction and the other register of actions provided the date of a plea but no information about the offense that Respondent pled guilty to. Although the Department provided a Clear Report to supplement the registers of actions, I found it equally lacking and unreliable. The Clear Report was less reliable because it was from a third-party and it was incomplete because it did not have all the conviction details for each case. Criminal records are public records, so the Department should have been able to procure more complete and reliable evidence to establish Respondent's alleged convictions.

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, the Department has not met its burden. An IPV (non-trafficking) is defined as an overissuance in which three conditions exist. Thus, in order for a non-trafficking IPV to be established, there must have been an overissuance. There is no allegation of trafficking here and the Department has not established an overissuance, so an IPV cannot be established.

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 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department did not establish that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification.

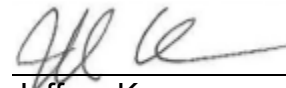
DECISION AND ORDER

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 not established that Respondent received an overissuance of FAP benefits.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP benefits.

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

DHHS

Dora Allen
14061 Lappin
Detroit, MI
48205

Wayne 76 County- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

