



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: August 2, 2018
MAHS Docket No.: 18-002724
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 31, 2018, from Lansing, Michigan. The Department was represented by Walter Broadworth, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4). During the hearing, 39 pages of documents were offered and admitted into evidence as Exhibit A, pages 1-39.

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 24, 1997, Respondent pled guilty to a controlled substance felony in Lenawee County, Michigan. Exhibit A, page 38.

2. On May 31, 2007, Respondent pled guilty to a controlled substance felony in Jackson County, Michigan. Exhibit A, page 39.
3. On [REDACTED], 2016, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, pages 10-35.
4. In the application Respondent submitted on [REDACTED], 2016, Respondent was not asked any questions regarding felony convictions, drug related or otherwise. Exhibit A, pages 10-35.
5. Respondent signed his application and thereby affirmed that he understood the questions in the application and that he provided true and complete information. Exhibit A, pages 17-18.
6. Respondent did not have any apparent physical or mental impairment which would have limited his understanding or his ability to answer the questions on his application truthfully and completely.
7. The Department approved Respondent for FAP benefits based on the information he provided in his application. The Department issued \$1,358.00 in FAP benefits to Respondent from October 1, 2016, through April 30, 2017. Exhibit A, page 37.
8. The Department conducted an investigation of Respondent's case and determined that Respondent had two or more felony drug convictions which he had not reported. The Department determined that it overissued Respondent \$1,358.00 in FAP benefits from October 1, 2016, through April 30, 2017. Exhibit A, page 3.
9. On March 20, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, pages 1-2.
10. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV. Exhibit A, page 1.
11. A Notice of Hearing was mailed to Respondent at his 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 (January 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, Respondent received more FAP benefits than he was entitled to receive. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (October 1, 2015), p. 2. Respondent had two or more felony drug convictions which occurred after August 22, 1996, so he was permanently disqualified from receiving benefits as of the date of his second conviction, May 31, 2007. Thus, all benefits issued to Respondent after May 31, 2007, were overissued because Respondent was not entitled to any benefits. The Department issued \$1,358.00 in FAP benefits to Respondent from October 1, 2016, through April 30, 2017. Thus, Respondent was overissued \$1,358.00 in FAP benefits.

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; (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. Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 1, 2016), p. 9. The Department clearly and correctly instructed Respondent to provide true and complete information on his application. There is no evidence in the

record to suggest that Respondent suffered from a physical or mental impairment that would limit his understanding or ability to fulfill his reporting responsibilities.

Based on the record presented, Respondent did not answer any questions on the application in a dishonest manner. In fact, Mr. Broadworth conceded that Respondent was never asked any questions on the application regarding his criminal history. Mr. Broadworth instead offered up the case notes of another case worker to show that Respondent made a false statement. The relevant part of the case notes state "No one has been convicted of a drug felony, No one is fleeing probation or parole." The case notes are not sufficient to establish by clear and convincing evidence that Respondent made a false statement to the Department in an attempt to get benefits which he was not entitled to receive. First, the case notes do not indicate where the case worker obtained the information that "No one has been convicted of a drug felony." Second, even if the case notes indicated that Respondent made that assertion, the case notes are hearsay, and the Department made no showing that it was not practicable to procure the direct testimony of the case worker involved. Without a showing of impracticability, the rules of evidence must be followed in an administrative hearing. MCL 24.275.

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, pages 15-16. In general, clients are disqualified for standards disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, page 16.

In this case, there was no IPV. Therefore, Respondent is not subject to a disqualification from receiving FAP benefits.

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. Respondent received an overissuance of FAP benefits in the amount of \$1,358.00 that the Department is entitled to recoup and/or collect.
2. The Department has not established by clear and convincing evidence that Respondent committed an IPV.

IT IS ORDERED THAT the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$1,358.00, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits as a result of this case.



JM/dh

John Markey
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

