



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 7, 2018
MAHS Docket No.: 18-005438
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 September 6, 2018, from Lansing, Michigan. The Department was represented by Allyson Carneal, Regulation Agent of the Office of Inspector General (OIG). Respondent, Michael Howard, did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4). During the hearing, 51 pages of documents were offered and admitted into evidence as Department's Exhibit A, pages 1-51.

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 November 15, 2001, Respondent was placed on probation for a term of 24 months out of Branch County, Michigan. One of the terms of probation required

Respondent to refrain from using or possessing controlled substances. Exhibit A, pp. 10-11.

2. On November 20, 2002, a bench warrant for Respondent's arrest was issued by Branch County Circuit Court Judge Michael Cherry on the basis of a violation of the terms of probation prohibiting use and possession of controlled substances. Exhibit A, pp. 12-13.
3. Petitioner has not been apprehended on the bench warrant for the alleged probation violation. This has resulted in Petitioner remaining on probation as an absconder. Exhibit A, pp. 45-46.
4. At some point, Respondent applied for and was granted FAP benefits.
5. On September 29, 2010, Respondent returned to the Department a completed Redetermination containing relevant ongoing FAP eligibility related information. Exhibit A, pp. 14-17.
6. In the returned Redetermination Respondent submitted on September 29, 2010, Respondent answered "no" when asked "Is anyone currently in violation of probation or parole." Exhibit A, p. 17.
7. Respondent signed the returned Redetermination and thereby affirmed that he understood the questions in the Redetermination and that he provided true and complete information. Further, Respondent acknowledged that he understood that if he intentionally provided untruthful information, he would potentially be charged with fraud and have to repay any benefits wrongfully received while also being disqualified from future participation in the FAP program. Exhibit A, p. 17.
8. 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.
9. On returned Redeterminations submitted on October 21, 2013, and September 29, 2016, Respondent again failed to honestly disclose that he was in violation of probation. On both of those Redeterminations, Respondent certified as he did on the September 29, 2010 Redetermination that his answers were truthful. Exhibit A, pp. 34-37, 38-43.
10. The Department found Respondent eligible for FAP benefits based on the information he provided to the Department. The Department issued FAP benefits to Respondent from May 1, 2012, through April 30, 2017, totaling \$11,693. Exhibit A, pp. 48-51.
11. The Department conducted an investigation of Respondent's case and determined that Respondent was in violation of probation, which he had not reported. The

Department determined that it overissued Respondent \$11,693 in FAP benefits from May 1, 2012, through April 30, 2017. Exhibit A, p. 3.

12. On May 18, 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, pp. 1-2.
13. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV. Exhibit A, page 1.
14. 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 (December 1, 2011), 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.

Respondent was placed on probation in Branch County, Michigan on November 15, 2001 for a term of 24 months. One of the requirements of Respondent's probation was that Respondent refrain from using or possessing any controlled substances without a prescription from a licensed physician. On November 20, 2002, Branch County Circuit Court Judge Michael Cherry issued a bench warrant for Respondent's arrest as a result of allegations that Respondent had used and possessed THC, a controlled substance, on November 12, 2002. Respondent has not been apprehended on the bench warrant. As Respondent was not discharged from probation and probation was not revoked, Respondent remains on probation, albeit as an absconder. By failing to comply finish probation or appear to face the probation violation charge against him, Respondent has remained in violation of multiple conditions of his probation since at least November 20, 2002.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified from receiving FAP benefits; the person remains disqualified as long as the violation occurs. BEM 203 (October 1, 2011), p. 2; BEM 203 (October 1, 2015), p. 2. Respondent was in violation of his probation terms from at least November 20, 2002 until present. Thus, all benefits issued to Respondent after November 20, 2002, were overissued, because Respondent was not entitled to any benefits. The Department issued \$11,693 in FAP benefits to Respondent from May 1, 2012, through April 30, 2017. Thus, Respondent was overissued \$11,693 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 (December 1, 2011), 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 met its burden. Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105 (May 1, 2012), p. 5. The Department clearly and correctly instructed Respondent to provide true and complete information on his application and warned of the consequences of failing to do so. 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.

Despite being clearly instructed to answer questions honestly and certifying that he had done so, Respondent repeatedly failed to completely and truthfully answer all questions on his application for assistance. In each of the three Redeterminations entered into evidence in this matter, the Department asked Respondent if he was in violation of probation or parole. On two of the Redeterminations, Respondent answered "no." On the other, Respondent did not provide an answer. Respondent intentionally misrepresented his criminal past to the Department to obtain benefits when he knew or should have known that the Department would consider the information in determining his eligibility for 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, pp. 13. 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. 13. 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. 13.

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. Respondent received an overissuance of FAP benefits in the amount of \$11,693 that the Department is entitled to recoup and/or collect.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits for a period of one year.

IT IS ORDERED THAT the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$11,693, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of one year.



JM/dh

John Markey
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

