



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 31, 2018
MAHS Docket No.: 18-007210
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 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 October 30, 2018, from Lansing, Michigan. The Department was represented by Mark Mandreky, 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). During the hearing, 83 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-83.

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 17, 1998, Respondent was convicted of a controlled substance felony in Kent County, Michigan. Exhibit A, p. 80.

2. On March 24, 2010, Respondent was convicted of a controlled substance felony in Kent County, Michigan. Exhibit A, p. 78.
3. On November 19, 2015, Respondent was convicted of a controlled substance felony in Kent County, Michigan. Exhibit A, p. 79.
4. As of July 2014, Respondent had an open FAP case with the Department. On July 15, 2014, the Department issued to Respondent a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 14-19.
5. On July 30, 2014, Respondent returned to the Department the completed Redetermination. On the completed Redetermination, Respondent was asked whether he had been convicted of a drug felony and if he had been convicted of a drug felony more than once. To the first question, Respondent honestly answered "yes." However, to the second question, Respondent dishonestly answered "no." Respondent signed the Redetermination, thereby certifying that all the information he provided to the Department was truthful and acknowledging the penalties for making false statements. Exhibit A, pp. 14-19.
6. On December 9, 2015, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 20-47.
7. The application Respondent submitted on [REDACTED], 2015, asked Respondent if he had been convicted of a drug felony and if he had been convicted of a drug felony more than once. To both questions, Respondent replied with "N/A." On the questions surrounding the drug felony question, Respondent answered either "Yes" or "No." Exhibit A, pp. 23-24.
8. Respondent signed the application and thereby certified that he understood the questions in the application and that he provided true and complete information. Exhibit A, p. 29.
9. On [REDACTED], 2016, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 51-75.
10. The application Respondent submitted on [REDACTED], 2016, asked Respondent if he had been convicted of a drug felony and if he had been convicted of a drug felony more than once. To both questions, Respondent replied with "N/A." On the questions surrounding the drug felony question, Respondent answered either "Yes" or "No." Exhibit A, pp. 51-75.
11. Respondent signed the application and thereby certified that he understood the questions in the application and that he provided true and complete information. Exhibit A, p. 57.

12. 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. Exhibit A, p. 82.
13. The Department approved Respondent for FAP benefits based on the information he provided in his Redetermination and applications. The Department issued Respondent \$5,018 in FAP benefits from August 1, 2014, through December 30, 2016. Exhibit A, pp. 81, 83.
14. 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 \$5,081 in FAP benefits from August 1, 2014, through December 30, 2016. Exhibit A, pp. 1-5.
15. On July 12, 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. 1-3.
16. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV. Exhibit A, pp. 1-5.
17. 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 (May 2014), 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 (July 2014), p. 2. Respondent had at least two 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, March 24, 2010. Thus, all benefits issued to Respondent after March 24, 2010, were overissued because Respondent was not entitled to any benefits. The Department issued \$5,081 in FAP benefits to Respondent from August 1, 2014, through December 30, 2016. Thus, Respondent was overissued \$5,081 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 (May 2014), 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 (April 2014), p. 6. The Department clearly and correctly instructed Respondent to provide true and complete information on the Redetermination and subsequent applications. 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 failed to completely and truthfully answer all questions on the July 30, 2014, Redetermination. The Department asked Respondent if he had been convicted of a drug felony, and Respondent honestly answered "yes." However, in response to the question asking Respondent whether he had been convicted of two or more drug-related felonies, Respondent dishonestly answered "no." On each of the following two applications, Respondent answered "N/A" to both of the drug-related felony questions. 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. Respondent failed to appear at the hearing to provide an explanation for his untruthful statements.

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. 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, 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 \$5,081 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 is 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 \$5,081, less any amounts already 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

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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
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Lansing, MI 48909-7562

Respondent

MI