



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 30, 2019
MOAHR Docket No.: 18-013655
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 April 22, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The hearing 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). During the hearing, a 57-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-57.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?
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 October 31, 2014, Respondent was convicted of a controlled substance felony in Missaukee County, Michigan. Exhibit A, pp. 43-44.
2. On March 26, 2018, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 12-42.
3. The application asked Respondent if he had been convicted of a drug-related felony, to which Respondent answered "Yes." The next question asked Respondent if he had been convicted of a drug-related felony more than once. Respondent answered "No" to that question. Exhibit A, p. 16.
4. Respondent signed the application and thereby certified that he understood the questions in the application and that he provided true and complete information. Respondent further certified that he understood the consequences of providing false information on the application. Respondent's signature further certified that he had received, read, and understood the information contained in the Information Booklet provided with the application. Exhibit A, pp. 23-24.
5. Included in the Information Booklet were instructions to report changes in circumstances to the Department within 10 days of the change and a description of the penalties for failing to do so. Exhibit A, pp. 24-42
6. Respondent's FAP benefits were approved, and the Department issued Respondent monthly FAP benefits through at least December 31, 2018. Exhibit A, pp. 49-50.
7. On July 2, 2018, Respondent was convicted of a drug-related felony in Missaukee County, Michigan. Exhibit A, pp. 45-46.
8. Respondent never reported the conviction to the Department.
9. The Department's OIG filed a hearing request December 14, 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report a change to his criminal history. Exhibit A, pp. 1-9.
10. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year for a first IPV. Exhibit A, pp. 1-9.
11. The Department's OIG indicates that the time period it is considering the fraud period with respect to FAP is September 1, 2018, through December 31, 2018 (fraud period), during which the Department issued Respondent \$768 in FAP benefits. The Department is seeking an order requiring Respondent to repay those benefits to the Department. Exhibit A, pp. 1-9; 49-50.

12. 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), 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.

The Department's position in this matter is that Respondent committed an IPV with respect to FAP and should be accordingly required to pay back the alleged ill-gotten gains and be disqualified from receipt of FAP benefits for a period of one year.

Overissuance

When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1; 7 CFR 273.18.

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 2015), p. 2; 7 CFR 273.1(b)(7)(vii). 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, July 2, 2018. Thus, all benefits issued to Respondent after July 2, 2018, were overissued because Respondent was not entitled to any benefits. The Department presented evidence that it issued at least \$768 in FAP benefits to Respondent from September 1, 2018, through December 31, 2018. Thus, Respondent was overissued \$768 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 his or her reporting responsibilities. BAM 720 (January 2016) p. 1; 7 CFR 273.16(c).

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 of proof. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (October 2016), p. 9. The Department clearly and correctly instructed Respondent of the requirement to provide truthful answers and the penalties for failing to do so. Respondent fulfilled that requirement and honestly reported his criminal history to the Department when asked.

Additionally, Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. Respondent was correctly informed of that requirement. However, he failed to satisfy his duty to timely report the second drug-related felony conviction to the Department.

This finding, however, does not end the inquiry. The Department must show by clear and convincing evidence that the withholding of the information was done with the intent to receive benefits to which he was not entitled. Respondent was honest regarding his criminal history on his application. He merely failed to report a change to his criminal history in a timely manner. Based on the record presented, it appears to be a negligent oversight as opposed to an intentional concealment. Accordingly, the Department has failed to prove by clear and convincing evidence that Respondent committed an intentional program violation with respect to FAP.

Disqualification

A client who is found to have committed an IPV with respect to FAP by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 15-16; 7 CFR 273.16. 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 ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203, p. 1; 7 CFR 273.16(b)(5).

There is no IPV with respect to FAP in this case. Thus, Respondent is not subject to a disqualification from receiving FAP benefits as a result of this decision.

DECISION AND ORDER

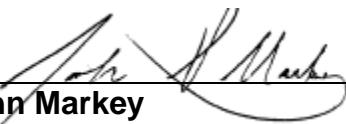
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$768 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 with respect to his FAP benefits.
3. Respondent is not subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total FAP overissuance amount of \$768 established in this matter less any amounts already recouped or collected.

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

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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 Office Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office Of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Missaukee-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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