



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 10, 2019
MAHS Docket No.: 18-007224
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 January 2, 2019, from Lansing, Michigan.

The Department was represented by Daniel Marchetti, Regulation Agent of the Office of Inspector General (OIG). Mr. Marchetti testified on behalf of the Department. The Department submitted 61 exhibits which were admitted into evidence.

Respondent did not appear at the hearing; and it 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). The record was closed at the conclusion of the hearing.

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 for one year?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's Office of Inspector General filed a hearing request on July 13, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed a FAP IPV. [Dept Exh. 1].
2. The Office of Inspector General has requested that Respondent be disqualified from receiving FAP benefits for 12 months. [Dept Exh. 1, 4-5].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept Exh. 56-61].
4. Respondent was aware of the responsibility to report previous drug convictions as evidenced by her checking "no," when asked if she had been convicted of a drug felony on the FAP application dated May 9, 2014 and again checking "no" to the question whether she had been convicted of more than one drug felony on the July 5, 2016 and May 30, 2017 FAP applications. [Dept. Exh. 16, 35-36, 46].
5. Respondent did not have an apparent mental impairment that would limit her understanding or ability to complete the FAP application accurately and truthfully. [Dept. Exh. 16, 35-36, 46].
6. Respondent did not appear and give evidence at the scheduled hearing to rebut the evidence presented by Petitioner in the Hearing Summary and admitted exhibits.
7. On April 1, 2001, Respondent pled guilty to Controlled Substance – Possession (narcotic). [Dept. Exh. 25-27].
8. On August 8, 2004, Respondent pled guilty to Controlled Substance – Possession (narcotic). [Dept. Exh. 28-30].
9. The Department's Office of Inspector General indicates that the time period it is considering the fraud period is June 1, 2014 through June 30, 2017. [Dept. Exh. 4-5, 56-61].
10. During the fraud period, Respondent was issued \$2,002.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. [Dept. Exh. 4-5].
11. The Department alleges that Respondent received an overissuance in Food Assistance Program benefits in the amount of \$2,002.00. [Dept. Exh. 4-5].
12. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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), Adult Services Manual (ASM), 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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (10/1/2017).

Criminal Justice Disqualifications

People who have been convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (5/1/2018). A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if terms of probation or parole are violated and the qualifying conviction is for two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p 2.

In this case, Respondent pled guilty to two felonies for Controlled Substance-Possession of (narcotic) on April 1, 2001 and August 8, 2004.

Intentional Program Violation

Suspected Intentional Program Violation means an overissuance exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, 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 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In the above captioned matter, when Respondent was asked if she had previous drug convictions on her July 5, 2016 and May 30, 2017 FAP applications, Respondent checked “no”. As evidenced by Respondent answering “no” on the application, the Department has established by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing and maintaining FAP benefits. This is Respondent’s first IPV.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 15. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or

State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 18. 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 17.

Here, the Department has requested a 12-month disqualification. Because Respondent's felony drug convictions occurred after August 22, 1996, Respondent was not eligible for FAP benefits. Consequently, Respondent is disqualified from receiving FAP benefits for 12 months.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018).

In this case, Respondent had two felony drug convictions after August 22, 1996. As a result of the felony drug convictions, Respondent was not eligible for FAP benefits. Therefore, Respondent received an overissuance of \$2,002.00 for the fraud period of June 1, 2014 through June 30, 2017.

DECISION AND ORDER

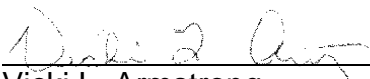
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive a FAP OI of program benefits in the amount of \$2,002.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,002.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for 12 months.

VLA/nr



Vicki L. Armstrong
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

Fiona Wicks
12185 James St Suite 200
Holland, MI
49424

Ottawa County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
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Respondent

[REDACTED]
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[REDACTED], MI
[REDACTED]