



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 2, 2019
MAHS Docket No.: 18-009506
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 December 18, 2018, from Lansing, Michigan. The Department was represented by Thomas Malik, Regulation Agent of the Office of Inspector General (OIG).

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).

Department's Exhibit A pages 1-44 were admitted as evidence.

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 benefits for Food Assistance Program?

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 OIG filed a hearing request on August 30, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of Food Assistance Program (FAP) benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report his circumstances accurately at application.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is May 16, 2017 - August 31, 2017 (fraud period).
7. During the fraud period, Respondent was issued \$682.00 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$682.00.
9. This was Respondent's **first** alleged IPV.
10. 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), 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.

Pertinent Department policy dictates:

Criminal Justice Disqualifications

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (10/1/2015). An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p 2.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP 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 (1/1/2016).

Intentional Program Violation

Suspected IPV means an OI 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.

The Department is requesting program disqualification and recoupment of benefits due to the Respondent's failure to report two or more drug felonies to DHHS. OIG investigation revealed that the Respondent submitted a DHHS-1171 Application for Assistance on [REDACTED] [REDACTED] 2017, thus acknowledging his rights and responsibilities of being on public assistance including accurately reporting circumstances to the department. Respondent answered "no" to the question "has anyone been convicted of a drug-related felony occurring after 8/22/1996?".

Respondent also answered "no" to the follow-up question, "more than once?" Respondent was subsequently approved for FAP benefits with a group size of one. MDHHS closed Respondent's case as of August 31, 2017, due to the FEE investigation findings. OIG investigation discovered that Respondent was convicted of/plead guilty to Controlled Substance Delivery/Manufacture Marijuana (333.7401 2D3) on June 29, 2005, in 3rd Circuit Court, Wayne County. Docket number 05-006270-FH. This is evidenced by records obtained from 3rd Circuit Court Register of Actions online database.

Respondent was then convicted of/plead guilty to Controlled Substance Delivery/Manufacture Marijuana (333.7401 2D3) on September 27, 2007, in 3rd Circuit Court, Wayne County. Docket number 07-014997-FH. This is evidenced by records obtained from 3rd Circuit Court Register of Actions online database. On August 17, 2018, a search of Bridges benefit issuance shows that Respondent received \$682 in FAP benefits during the period May 16, 2017, through August 31, 2017. Respondent was alone in the group. On August 20, 2018, OIG Agent M. O' Sullivan advised that there were no closed case file materials for the Respondent. On August 30, 2018, Infoview EBT history report for Respondent showed that he made numerous purchases during the period July 6, 2017, through September 25, 2017.

Respondent applied for and received Food Assistance Program (FAP) benefits from the State of Michigan. Respondent falsely reported the number of felony drug convictions at time of application to gain public assistance. Respondent's failure to report the State of Michigan DHHS resulted in receiving public assistance (FAP) for which he was not eligible. Respondent failed to sign the MDHHS-4350, Intentional Program Violation Repayment Agreement or the MDHHS-826, Request for Waiver of Disqualification

Hearing. The amount of the Over Issuance is \$682.00 for the period of May 16, 2017 - August 31, 2017.

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, p 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving Family Independence Program, FAP, or State Disability Assistance, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and **lifetime for the third IPV 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 twelve-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 lifetime.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

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 OI of \$682.00 in Food Assistance Program (FAP) benefits from May 16, 2017 - August 31, 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 an OI of FAP benefits in the amount of \$682.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$682.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for the requested 12-month period in accordance with Department policy.

LL/hb



Landis Lain
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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Tara Roland 82-17
8655 Greenfield
Detroit, MI 48228

Wayne County (District 17), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

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