



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 16, 2019
MAHS Docket No.: 18-009731
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on January 3, 2019, from Lansing, Michigan. The Department was represented by Lachaunta Walker, 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).

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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (FAP)?

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 an application for assistance dated ██████████ 2017, Respondent acknowledged his duties and responsibilities including the duty to report the drug-related felony convictions of group members. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 17-35.

2. Respondent acknowledged under penalties of perjury that his [REDACTED], 2017, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 35.
3. Respondent reported on his [REDACTED] 2017, application for assistance that he had not been convicted of any felonies involving controlled substances. Exhibit A, p 23.
4. Respondent failed to report on the application form that on June 13, 2000, he had pled guilty to Attempted Delivery/Manufacture of a Controlled Substance Less Than 25 Grams. Exhibit A, pp 10-12.
5. Respondent failed to report on the application form that on June 4, 2008, he had pled guilty to Delivery/Manufacture of a Controlled Substances Less Than 50 Grams. Exhibit A, pp 13-16.
6. Respondent received Food Assistance Program (FAP) benefits as a group of one totaling \$565 from [REDACTED] 2017, through September 30, 2017. Exhibit A, pp 36.
7. On September 21, 2018, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$565 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, p 5-8.
8. The Department's OIG filed a hearing request on September 21, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
9. A Notice of Hearing was mailed to Respondent at the last known address and 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, p. 1.

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 convictions were for conduct which occurred after August 22, 1996. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 4.

On an application for assistance dated [REDACTED] 2017, Respondent failed to report his history of felony convictions involving controlled substances. Respondent did report that there were three people living in his household, including an adult not included in the FAP benefit group.

Respondent is not eligible for FAP benefits as a person convicted of two or more felonies involving controlled substances. BEM 203.

However, from June of 2017 through August of 2017, it appears that Respondent may have been approved for FAP benefits as a group of one based on the \$194 monthly allotment of FAP benefits. While Respondent failed to report his history of felony convictions on his application form, the record evidence does not establish what was discussed during the mandatory eligibility interview, where he may have reported his felony convictions.

The hearing record is not inconsistent with a person that did report a history of felony convictions involving controlled substances, and the Department finding eligibility for FAP benefits for the minor child in Respondent's household only. There is no explanation as to why Respondent's monthly allotment of FAP benefits was only \$194 per month if he was approved for FAP benefits as a group of two based on the intentional concealment of his felony convictions.

Therefore, the Department has failed to establish that Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. Therefore, the Department has not established an Intentional Program Violation (IPV).

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:

The Department DID NOT establish by clear and convincing evidence that Respondent committed an IPV. The Department is ORDERED to delete the OI and cease any recoupment action.

KS/dh



Kevin Scully
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 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

Lori Duda
30755 Montpelier Drive
Madison Heights, MI 48071

Oakland County (District 2), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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