



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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██████████ IN ██████████

Date Mailed: February 15, 2019
MAHS Docket No.: 18-009849
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. The hearing was adjourned on December 13, 2018, after the Notice of Hearing was returned by the US Postal Service. A second Notice of Hearing was also returned by the US Postal Service. After due notice, telephone hearing was held on January 24, 2019, from Lansing, Michigan. The Department was represented by Shannon Davis, 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 ██████████ 2015, 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 10-37.

2. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2015, 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 20.
3. Respondent reported on his [REDACTED] [REDACTED] 2015, application for assistance that he had not been convicted of any felonies involving controlled substances. Exhibit A, 14.
4. Respondent failed to report to the Department that on August 2, 2010, he had pled guilty to Possession of a Controlled Substance Less Than 25 Grams. Exhibit A, p 39.
5. Respondent failed to report to the Department that on August 2, 2012, he had pled guilty to Delivery/Manufacture of a Controlled Substance Less Than 50 Grams. Exhibit A, p 40.
6. Respondent received Food Assistance Program (FAP) benefits totaling \$758 from [REDACTED] [REDACTED] 2015, through August 31, 2015. Exhibit A, pp 38.
7. On September 27, 2018, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$758 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 27, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
9. This was Respondent's first established IPV.
10. A Notice of Hearing was mailed to Respondent at the last known address and was 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.

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.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. The person is disqualified as long as the violation occurs. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 2.

On an application for assistance dated [REDACTED] 2015, Respondent acknowledged his duties and responsibilities including his duty to report any convictions for felony offenses involving controlled substances where the offenses occurred after August 22, 1996. Respondent did not have an apparent physical or mental impairment that would limit the

understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that his [REDACTED] 2015, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported on his [REDACTED] 2015, application for assistance that he had not been convicted of any felonies involving controlled substances.

Respondent failed to report to the Department that he had pled guilty to separate felony offenses involving controlled substances on August 2, 2010, and August 2, 2012.

Respondent received FAP benefits totaling \$758. If Respondent had truthfully reported his history of convictions for conduct involving controlled substances where the offenses occurred after August 22, 1996, then the Department would have permanently disqualified him from FAP. If Respondent had been permanently disqualified Respondent from FAP then he would not have been eligible for any of the FAP benefits he received. Therefore, Respondent received a \$758 overissuance of FAP benefits.

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 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 IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise

facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

On an application for assistance dated [REDACTED] 2015, Respondent acknowledged his duties and responsibilities including his duty to report any convictions for offenses involving controlled substances where the offenses occurred after August 22, 1996. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that his [REDACTED] 2016, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent falsely reported that he had not been convicted of any felonies involving controlled substances, which resulted in an overissuance of FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report having two or more convictions for conduct involving controlled substances where the offenses occurred after August 22, 1996, for the purposes of becoming eligible for FAP benefits that he would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 16.

The record evidence indicates that this is Respondent's first established IPV.

The Department has 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:

1. The Department did establish by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$758.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$758 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

