



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: June 6, 2019
MOAHR Docket No.: 19-001542
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 29, 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, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. From November 19, 2012 to October 31, 2013, Respondent received more than \$2,080 in FAP benefits for his single-person FAP group (Exhibit A, pp. 127-130).

2. From February 11, 2015 to June 30, 2015, Respondent received more than \$900 in FAP benefits for his single-person FAP group (Exhibit A, pp. 131-132).
3. Respondent has two drug-related convictions: (1) on October 14, 1997, he pled guilty to possession (narcotic or cocaine) less than 25 grams (MCL 333.7403(2)(A)(5)) for an incident occurring September 17, 1997 and (2) on January 9, 2004, he pled guilty to delivery/manufacture (narcotic or cocaine) less than 50 grams (MCL 333.7401(2)(A)(4)) (Exhibit A, pp. 100-105, 109, 112).
4. Respondent denied having any convictions for drug-related felonies on the applications he signed and submitted to the Department on November 19, 2012; September 25, 2013; and February 11, 2015 (Exhibit A, p. 16, 46, 76).
5. The Department had no reason to believe that Respondent had a physical or mental impairment that would limit his understanding or ability to accurately report his convictions.
6. The Department's OIG filed a hearing request on January 22, 2019, alleging that Respondent intentionally withheld information concerning his drug-related felony convictions and as a result received FAP benefits he was ineligible to receive from November 19, 2012 to October 31, 2013 and from February 11, 2015 to July 31, 2015 (fraud period).
7. Respondent does not have any prior FAP IPV disqualifications.
8. 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5. An IPV occurs when a recipient of Department benefits intentionally (1) made a false

or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c).

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. 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; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010). For an IPV based on inaccurate reporting, Department policy requires that the individual also have been clearly and correctly instructed regarding his or her reporting responsibilities and have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because he failed to disclose that he had two drug-related felony convictions. Federal law provides that a state may elect to disqualify from FAP eligibility any individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has an element the possession, use, or distribution of a controlled substance. 21 USC 862a(a)(2); 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m). This disqualification applies only if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862(d)(2); 7 CFR 273.11(m). A state may, by legislation adopted after August 22, 1996, elect not to apply the disqualification or to limit its period of application. 21 USC 862a(d)(1); 7 CFR 273.11(m). A state that has elected not to opt out must require an individual applying for FAP to state in writing during the application process whether the individual or any member of his or her household has been convicted of a drug-related felony. 21 USC 862a(c).

Michigan has not opted out or limited the application of the FAP disqualification due to drug-related felony convictions. 2018 PA 207, § 619(2) of public benefits appropriation. In Michigan, Department policy provides that, effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances is permanently disqualified from receipt of FAP if the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203 (January 2015), p. 2.

The Department presented evidence showing that Respondent had two drug convictions: (1) on October 14, 1997, he pled guilty to possession (narcotic or cocaine) less than 25 grams (MCL 333.7403(2)(A)(5)) for an incident occurring September 17, 1997 and (2) on January 9, 2004, he pled guilty to delivery/manufacture (narcotic or cocaine) less than 50 grams (MCL 333.7401(2)(A)(4)) (Exhibit A, pp. 100-105, 109, 112). Based on the statutory citations for each conviction, both convictions are identified as felonies under Michigan law. The Department's evidence established that

both convictions involved occurrences after August 22, 1996. Because Respondent did not appear at the hearing, there was no evidence to dispute the Department's evidence that Respondent had two drug-related felony convictions for conduct occurring after August 22, 1996. Therefore, the Department established that Respondent had two drug-related felony convictions that made him ineligible for FAP.

Respondent was specifically asked in the applications he submitted to the Department on November 19, 2012; September 25, 2013; and February 11, 2015 if he had been convicted for any drug-related felonies, and he checked "no." Respondent signed the application, certifying that the information he provided was true and acknowledged understanding that he could be prosecuted for fraud and be required to repay any benefits wrongfully received by him based on the information he provided or withheld (Exhibit A, pp. 22, 52, 82). Respondent's failure to disclose his felony drug convictions in his applications was sufficient to establish that he intentionally withheld information that, if properly disclosed, would have made him ineligible for FAP benefits. Under these circumstances, the Department established by clear and convincing evidence that Respondent committed an IPV in connection with his FAP case.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. No evidence of any prior FAP IPV was presented. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. 7 CFR 273.18(a)(2); BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$2,980 during the fraud period. The Department presented a benefits summary inquiry showing that Respondent was issued more than \$2,980 in FAP benefits during the fraud period. Because of his felony drug convictions, as described above, Respondent was a disqualified member of his FAP group during the fraud period. 7 CFR 273.11(m); BEM 212 (January 2017), pp. 8-9. Because he was the only member of his FAP group, he was not eligible for any of the FAP benefits issued to him during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$2,980 from Respondent for overissued FAP benefits during the fraud period.

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 **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$2,980.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of \$2,980, less any amounts already recouped/collected, for the fraud period.

It is FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of **12 months**.

AE/tm



Alice C. Elkin
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 of 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 Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox

[REDACTED]