



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], MI

Date Mailed: August 15, 2019
MOAHR Docket No.: 19-002792
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 or Petitioner), 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 August 13, 2019, from Lansing, Michigan. The Department was represented by Cynthia Smith, 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).

Petitioner's Exhibit A, pages 1-116 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 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. The Department's OIG filed a hearing request on March 18, 2019, 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 FAP benefits issued by the Department.
4. Respondent applied for public assistance on [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2016, [REDACTED] 2016, [REDACTED] 2017, and [REDACTED] 2017, and acknowledged his ongoing obligation to accurately report his circumstances to DHHS. On all of these applications, Respondent provided false information by checking "No" to the questions "Convicted of a Drug Felony?" and "Convicted of a Drug Felony more than once?"
5. Per MDHHS policy BEM 203, an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate instances will be permanently disqualified from FAP if both convictions were for conduct which occurred after August 22, 1996.
6. Verification was received from Washtenaw County 22nd Judicial Circuit Court that Respondent had five drug related felony convictions.
7. Washtenaw County, Case number 10-000458FH, Conviction Date: March 24, 2010, Offense: Controlled Substance-Possession less than 25g; MCL 333.74032
8. Washtenaw County, Case number 10-000355FH, Conviction Date: April 19, 2010, Offense: Controlled Substance-Del/Mfg less than 50g; MCL 333.74012A4 Offense: Controlled Substance-Del/Mfg Marijuana; MCL 333.74012D3
9. Washtenaw County, Case number 10-001646FH, Conviction Date: November 29, 2010 Offense: Controlled Substance-Del/Mfg less than 50g; MCL 333.74012A4
10. Washtenaw County, Case number 11-001240FH, Conviction Date: September 27, 2011, Offense: Controlled Substance-Possession less than 25g; MCL 333.74032A5
11. Washtenaw County, Case number 11-001683FH, Conviction Date: February 6, 2012, Offense: Controlled Substance-Possession less than 25g; MCL 333.74032A5

12. Due to these convictions, Respondent was permanently disqualified from FAP per policy.
13. Respondent **was** aware of the responsibility to properly and truthfully disclose information to the Department.
14. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
15. The Department's OIG indicates that the time period it is considering the fraud period is September 26, 2014-September 30, 2016; November 14, 2016-April 30, 2017, and June 12, 2017-January 31, 2018 (fraud period).
16. During the fraud period, Respondent was issued \$7238 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.
17. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$7,238.
18. This was Respondent's **first** alleged IPV.
19. 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 Respondent's failure to report two or more drug felonies to DHHS.

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 to 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.

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 \$7,238.00 in FAP benefits for the period of September 26, 2014-September 30, 2016 (\$4,687); November 14, 2016-April 30, 2017 (\$1,079); and, June 12, 2017-January 31, 2018 (\$1,472).

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 \$7,238.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$7,238.00 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 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Jeanenne Broadnax
25637 Ecorse Rd.
Taylor, MI 48180

Wayne County (District 18), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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