



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 [REDACTED]

Date Mailed: October 15, 2019
MOAHR Docket No.: 19-004988
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 August 23, 2019. After due notice, a telephone hearing was held on October 1, 2019, 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).

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 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 [REDACTED] [REDACTED] 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 17-45.

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 28.
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, p 21.
4. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 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 46-51.
5. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2015, Redetermination 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 51.
6. Respondent reported on his [REDACTED] [REDACTED] 2015, Redetermination form that he had not been convicted of any felonies involving controlled substances. Exhibit A, p 51.
7. On a Redetermination (DHS-1010) received by the Department on November 29, 2016, 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 52-59.
8. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2016, Redetermination 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 58.
9. Respondent reported on his [REDACTED] [REDACTED] 2016, Redetermination form that he had not been convicted of any felonies involving controlled substances. Exhibit A, p 58.
10. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 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 60-67.
11. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2017, Redetermination 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 66.

12. Respondent reported on his [REDACTED] 2017, Redetermination form that he had not been convicted of any felonies involving controlled substances. Exhibit A, p 66.
13. Respondent failed to report to the Department that on April 16, 2001, he pleaded guilty to Possession of a Controlled Substance Less Than 25 Grams for an August 23, 2000, offense. Exhibit A, pp 12-14.
14. Respondent failed to report to the Department that on October 22, 2002, he pleaded guilty to Possession of a Controlled Substance Less Than 25 Grams for a June 23, 2002, offense. Exhibit A, pp 15-16.
15. Respondent failed to report to the Department that on January 22, 2007, he pleaded guilty to Possession of a Controlled Substance Less Than 25 Grams for a July 14, 2006, offense. Exhibit A, pp 71-72.
16. Respondent received Food Assistance Program (FAP) benefits totaling \$6,784 from February 1, 2015, through December 31, 2017. Exhibit A, pp 75-83.
17. On May 8, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$6,784 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
18. The Department's OIG filed a hearing request on May 8, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
19. This was Respondent's first established IPV.
20. The most recent 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.

An 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 as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C.802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. 7 CFR 273.11(m).

Subject to federal approval, an individual is not entitled to the exemption in this section if the individual was convicted of 2 or more separate felony acts that included the possession, use, or distribution of a controlled substance and both acts occurred after August 22, 1996. 2018 PA 207 § 619 (Appropriations Act).

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] [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] [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] [REDACTED] 2015, application for assistance that he had not been convicted of any felony offenses involving controlled substances.

Respondent again acknowledged the duties and responsibilities of receiving FAP benefits on Redetermination (DHS-1010) forms received by the Department on [REDACTED] 21, 2015, [REDACTED] [REDACTED] 2016, and [REDACTED] [REDACTED] 2017. 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 each of his redetermination forms were examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported on each of his Redetermination forms that he had not been convicted of any felony offenses involving controlled substances.

Respondent failed to report to the Department that he had pled guilty to separate felony offenses on April 16, 2001, October 22, 2002, and January 22, 2007. Each of these felony convictions were for conduct occurring after August 22, 1996.

Respondent received FAP benefits totaling \$6,784 from February 1, 2015, through December 31, 2017. 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 from FAP then he would not have been eligible for any of the FAP benefits he received. Therefore, Respondent received a \$6,784 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, and three Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2015, [REDACTED], 2015, and [REDACTED], 2017, 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 each of his application and redetermination forms were 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 felony offenses 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 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 and maintaining his eligibility 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, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person 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 has established 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 \$6,784.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$6,784 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/hb



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 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

Courtney Jenkins
22 Center Street
Ypsilanti, MI 48198

Washtenaw County (District 20), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
MI [REDACTED]