



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: October 18, 2018
MAHS Docket No.: 18-007081
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on October 16, 2018, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 81 pages of documents were offered and admitted into evidence as Exhibit A, pp. 1-81.

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 FAP benefits?

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 December 2, 1997, Respondent pled guilty to a controlled substance felony in Saginaw County, Michigan. Exhibit A, p. 80.

2. On November 24, 1999, Respondent pled guilty to a controlled substance felony in Saginaw County, Michigan. Exhibit A, p. 79.
3. On July 14, 2015, the Department issued to Respondent a Redetermination, Form 1010, to obtain relevant ongoing eligibility information from Respondent. Exhibit A, pp. 11-16.
4. On J██████ 2015, Respondent returned to the Department the completed Redetermination and certified that all information contained within the document was accurate. Exhibit A, pp. 11-16.
5. On the Redetermination, Respondent answered “no” when asked if she had been convicted of a drug felony occurring after August 22, 1996, and “no” when asked if she had been convicted of a drug felony more than once. Exhibit A, p. 15.
6. Respondent signed the Redetermination and thereby affirmed that she understood the questions in the application and that she provided true and complete information. Exhibit A, p. 15.
7. Respondent did not have any apparent physical or mental impairment which would have limited his understanding or his ability to answer the questions on his application truthfully and completely.
8. The Department approved Respondent for FAP benefits based on the information she provided in her submissions to the Department. The Department issued FAP benefits to Respondent from August 1, 2015, through November 30, 2017. Exhibit A, p. 81.
9. The Department conducted an investigation of Respondent’s case and determined that Respondent had two or more felony drug convictions which she had not reported. The Department determined that it overissued Respondent \$5,070.00 in FAP benefits from August 1, 2015, through November 30, 2017. Exhibit A, pp. 3-4.
10. On June 26, 2018, the Department’s OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, pp. 1-2.
11. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV. Exhibit A, p. 1.
12. A Notice of Hearing was mailed to Respondent at her last known address and it 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), Bridges Eligibility Manual (BEM), 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.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (October 1, 2015), 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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, the Department has not met its burden. Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 1, 2015), p. 8. The Department clearly and correctly instructed Respondent to provide true and complete information on her Redetermination. There is no evidence in the record to suggest that Respondent suffered from a physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities.

Despite being clearly instructed to answer questions honestly and certifying that she had done so, Respondent failed to completely and truthfully answer all questions on her Redetermination. However, during the hearing, Respondent credibly denied having intentionally answered the questions in a dishonest manner. The question at issue asked whether Respondent had been convicted of any drug related felonies occurring on or after August 22, 1996. Respondent's convictions took place in 1997 and 1999, and according to Respondent's credible testimony, they related to activity that occurred before August of 1996. Given the long lapse of time and closeness to the cutoff date,

Respondent's testimony is credible. Thus, the Department has not proven by clear and convincing evidence that Respondent intentionally provided false information to the Department.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 2015), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (October 1, 2015), p. 2. The timeline for the convictions is clarified by 21 USC 862a(d)(2), which states that the disqualifying convictions must be based on conduct which occurred after August 22, 1996, regardless of when the conviction was entered. 21 USC 862a(d)(2).

Respondent had two or more felony drug convictions that were handed down after August 22, 1996. However, during the hearing, Respondent credibly testified that at least one of the convictions was based on events that happened in the summer of 1996, before August. The Department was unable to present any evidence to rebut Respondent's credible assertion. Thus, even though the conviction was handed down after August 22, 1996, it is not disqualifying because it was based on conduct that occurred prior to that date. Because Respondent did not have two felony drug convictions based on conduct that occurred after August 22, 1996, she was not disqualified from receiving FAP benefits. Accordingly, the Department has failed to show that Respondent received any overissuance of FAP benefits.

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, pp. 15-16. In general, clients are disqualified for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. 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. 16.

In this case, there is no IPV. Therefore, Respondent is not subject to a disqualification from receiving FAP benefits.

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:

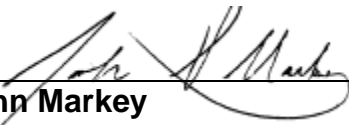
1. The Department did not establish that Respondent received an overissuance of FAP benefits.

2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent shall not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall not be disqualified from receiving FAP benefits.

IT IS FURTHER ORDERED that the Department shall delete the alleged overissuance from Respondent's case.

JM/dh



John Markey
Administrative Law Judge
for Nick Lyon, 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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Saginaw County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED]