



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 28, 2019
MOAHR Docket No.: 19-002763
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 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 June 24, 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. The hearing 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). During the hearing, a 264-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-264.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to FAP?
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 May 9, 2000, Respondent was convicted of a controlled substance felony in Saginaw County, Michigan. Exhibit A, p. 165.

2. On [REDACTED], 2010 and [REDACTED] 2012, Respondent filed with the Department applications for FAP benefits. Exhibit A, pp. 12-27; 28-51.
3. The applications asked Respondent if he had been convicted of a drug-related felony, to which Respondent answered "No." Exhibit A, pp. 25; 45.
4. Respondent signed the applications and thereby certified that he understood the questions in the applications and that he provided true and complete information. Respondent further certified that he understood the consequences of providing false information on the applications. Exhibit A, pp. 26; 47.
5. On January 8, 2013, Respondent was convicted of a second controlled substance felony in Saginaw County, Michigan. Exhibit A, p. 166.
6. Respondent submitted applications for FAP benefits again on [REDACTED] 2013, [REDACTED], 2013, and [REDACTED] 2014. On each of those three applications, Respondent misrepresented his criminal history by claiming that he either had no drug-related felonies or that he did not have two or more drug-related felonies. Exhibit A, pp. 52-75; 76-99; 100-132.
7. Respondent signed the applications and thereby certified that he understood the questions in the applications and that he provided true and complete information. Respondent further certified that he understood the consequences of providing false information on the applications. Exhibit A, pp. 71; 95; 113.
8. Respondent's FAP applications were approved, and the Department began issuing Respondent FAP benefits. From October 1, 2011 through September 30, 2015, Respondent received \$4,337 in FAP benefits. Exhibit A, pp. 167-174.
9. The Department's OIG filed a hearing request March 8, 2019, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV by misrepresenting his criminal history in his applications. Exhibit A, pp. 1-9.
10. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year for a first IPV. Exhibit A, pp. 1-9.
11. The Department's OIG indicates that the time period it is considering the fraud period with respect to FAP is October 1, 2011, through September 30, 2015 (fraud period), during which the Department issued Respondent \$4,337 in FAP benefits. The Department is seeking an order requiring Respondent to repay those benefits to the Department. Exhibit A, pp. 1-9; 167-264.
12. 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.

13. During the hearing, the Department representative conceded that the fraud period was improperly determined and stated that it should have only began after Respondent received his second drug-related felony conviction on January 8, 2013.

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.

The Department's position in this matter is that Respondent committed an IPV with respect to FAP and should be accordingly required to pay back the alleged ill-gotten gains and be disqualified from receipt of FAP benefits for a period of one year.

Overissuance

When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the overissuance. BAM 700 (December 2011), p. 1; 7 CFR 273.18.

In this case, Respondent received more FAP benefits than he was entitled to receive. 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 2012), p. 2; 7 CFR 273.1(b)(7)(vii). Respondent had at least two felony drug convictions which occurred after August 22, 1996, so he was permanently disqualified from receiving benefits as of the date of his second conviction, January 8, 2013. Thus, all benefits issued to Respondent after January 8, 2013, were overissued because Respondent was not entitled to any benefits. The Department issued FAP benefits to Respondent from February 1, 2013 through September 30, 2015. Thus, Respondent was overissued FAP benefits.

However, the Department did not substantiate its allegation that Respondent received an overissuance of \$4,337 and conceded that the amount it was seeking was incorrect. Respondent did not receive his second drug-related felony until January 8, 2013 yet the Department was attempting to establish an overissuance for that very reason going all the way back to October 1, 2011.

The correct fraud period should have been February 1, 2013 through September 30, 2015. According to the evidence in the record, Respondent received \$4,118 during that time period. Thus, the Department has established that Respondent received an overissuance of FAP benefits totaling \$4,118 that the Department is entitled to recoup and/or collect, minus any amounts already recouped and/or collected.

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 his or her reporting responsibilities. BAM 720 (August 2012) p. 1; 7 CFR 273.16(c).

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 met its burden of proof. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (September 2012), p. 5. The Department clearly and correctly instructed Respondent of the requirement to provide truthful answers and the penalties for failing to do so.

Despite being clearly instructed to answer questions honestly and certifying that he had done so, Respondent failed to completely and truthfully answer all questions on the [REDACTED], 2013, [REDACTED], 2013, and [REDACTED] 2014 applications. On each form, the Department asked Respondent whether he had been convicted of a drug-related felony and whether he had been convicted of a drug-related felony more than once. On each application, Respondent dishonestly represented his criminal history to the Department. Respondent intentionally misrepresented his criminal past to the Department to obtain benefits when he knew or should have known that the Department would consider the information in determining his eligibility for FAP benefits. The Department has proven by clear and convincing evidence that Respondent committed an intentional program violation with respect to FAP.

Disqualification

A client who is found to have committed an IPV with respect to FAP by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 12-13; 7

CFR 273.16. 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. 13. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 13; BEM 203, p. 1; 7 CFR 273.16(b)(5).

There is no evidence on the record that Respondent has previously been found to have committed an IPV with respect to FAP. Thus, Respondent is subject to a one-year disqualification from receiving FAP benefits.

DECISION AND ORDER

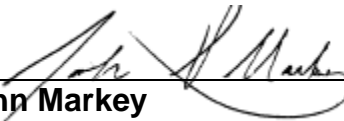
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$4,118 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total FAP overissuance amount of \$4,118 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/cg



John Markey
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

Via Email:

MDHHS-Saginaw-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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