



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: August 16, 2019  
MOAHR Docket No.: 19-003688  
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 August 5, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and represented himself.

### **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 September 1, 2017 to April 30, 2018, Respondent received \$624 in FAP benefits for his single-person FAP group (Exhibit A, p. 40).
2. Respondent has two drug-related convictions: (1) on July 28, 2017, he pled guilty to possession of a controlled substance (less than 25 grams) (MCL

333.7403(2)(A)(5)) and (2) on March 6, 2001, he pled guilty to delivery of a controlled substance (less than 50 grams) (MCL 333.7401(2)(a)(4)) (Exhibit A, pp. 31-34).

3. On an application he submitted to the Department on December 11, 2017, Respondent denied having any convictions for drug-related felonies (Exhibit A, p. 28).
4. Respondent is the recipient of State Supplemental Income (SSI) (Exhibit A, p. 25).
5. The Department's OIG filed a hearing request on April 3, 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 September 1, 2017 to April 30, 2018 (fraud period).
6. Respondent does not have any prior FAP IPV disqualifications.
7. 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 July 28, 2017, he pled guilty to possession of a controlled substance (less than 25 grams) (MCL 333.7403(2)(A)(5)) and (2) on March 6, 2001, he pled guilty to delivery of a controlled substance (less than 50 grams) (MCL 333.7401(2)(a)(4)) (Exhibit A, pp. 31-34). Based on the statutory citations for each conviction, both convictions are identified as felonies under Michigan law. Respondent did not dispute the convictions or argue that they involved incidents occurring before August 22, 1996. The Department established that Respondent failed to disclose his two drug-related felony convictions in his December 11, 2017 application. However, an IPV requires that a beneficiary have intentionally withheld or misrepresented facts. 7 CFR 273.16(c). Evidence at the hearing established that Respondent was the recipient of SSI benefits and Respondent testified that he received SSI due to a disability that resulted in a mental impairment and he had an eighth-grade education. It is found that Respondent lacked the capacity to commit an IPV in the instant case. Under these circumstances, the Department has not 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 not established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a 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 \$624 during the fraud period. The Department presented a benefits summary inquiry showing that Respondent was issued \$624 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. 7 CFR 273.11(m); BEM 212 (January 2017), pp. 8-9. However, Respondent's obligation to report his drug-related felonies was tied to the December 11, 2017 application, his first application after his second conviction on July 28, 2017. See 21 USC 862a(c) (requiring that states that disqualify individuals with two drug-related felony convictions from FAP ask individuals applying for FAP to disclose such convictions) and 7 CFR 273.11(a) (listing reporting obligations). Therefore, the \$16 issued to him in September 2017 is excluded from the FAP OI that the Department is entitled to receive. Thus, the Department is entitled to repayment of \$608 in overissued FAP benefits, the amount Respondent received from December 11, 2017 to April 20, 2018.

## 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 not** 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 \$608.

The Department is ORDERED to reduce the FAP OI to \$608 and initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of \$608, less any amounts already recouped/collected, for the fraud period.



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**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 Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Petitioner**

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

**DHHS**

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

**Respondent**

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

cc: IPV-Recoupment Mailbox

[REDACTED]