



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 12, 2021
MOAHR Docket No.: 20-007071
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] committed an intentional program violation (IPV). Pursuant to MDHHS' request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on February 10, 2021.

Karrie Felenchak, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4); Mich Admin Code, R 400.3130(5); or Mich Admin Code, R 400.3178(5).

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an IPV concerning Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving benefits for FAP?
3. Did Respondent receive an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

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 [REDACTED] 2010, Respondent pled guilty to Controlled Substance-delivery of narcotics or cocaine on school property under MCL 333.7401(2).
2. On [REDACTED] 2012, Respondent pled Nolo Contendere to Controlled Substance-possession of less than 25 grams of cocaine under MCL 333.7403(2)(a)(v).
3. On [REDACTED] 2017, the Department received Respondent's Application for FAP benefits on which he indicated that he did not have any drug related felony convictions.
4. On [REDACTED] 2018, Respondent submitted a second Application for FAP benefits indicating that he did not have any drug related felony convictions.
5. Both Applications were signed under penalty of perjury that all information contained within the document was true and complete to the best of Respondent's knowledge.
6. Based upon Respondent's Applications, the Department issued \$5,458.00 in FAP benefits to Respondent.
7. Respondent was aware of the responsibility to accurately answer all questions on forms.
8. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately answer questions on forms.
9. Respondent has no prior FAP IPV disqualifications.
10. On August 26, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally misrepresented his felony drug conviction status and as a result received FAP benefits from October 2017 through April 2020 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$5,458.00 to MDHHS for FAP benefits that Respondent was ineligible to receive and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV.
11. 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

MDHHS policies are contained in the MDHHS 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 funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3031.

Intentional Program Violation

An IPV occurs when a recipient of MDHHS benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, MDHHS's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is committed by a state government employee. BAM 720 (October 2017), pp. 12-13.

To establish an IPV, MDHHS 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 firm belief or conviction as to the truth of the precise facts in issue." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. The clear and convincing standard is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). For an IPV based on inaccurate reporting, MDHHS policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV of FAP because he misrepresented his circumstances by failing to disclose that he had two or more drug-related felony convictions each occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2017), p. 9; 7 CFR 273.2(b)(iii). People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2017), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated, and the qualifying conviction occurred after August 22, 1996, or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and

(11); 1997 PA 109. The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2). It should be noted that effective October 1, 2020, individuals with drug related felony convictions became eligible for FAP benefits regardless of their conviction status. BEM 203 (October 2020). However, this case addresses Petitioner's misrepresentation of his circumstances which affected eligibility between October 2017 and April 2020.

The Department presented documentation including a Register of Actions, Case Details Sheet, and Certified Court record from the [REDACTED] Circuit Courts detailing Respondent's criminal history. According to the records provided, Respondent had two drug-related felony convictions after August 22, 1996. His first conviction was on [REDACTED] 2010, for Controlled Substance-delivery of a narcotic or cocaine on school property. In the second case, Respondent was convicted of Controlled Substance-possession of cocaine less than 25 grams on [REDACTED] 2012. The cited statutory grounds for each set of convictions in the documents presented establish that Respondent had two felony drug convictions. Each conviction has possession, use, or distribution of a controlled substance as an element.

In support of its contention that Respondent committed an IPV, the Department presented two Applications signed and submitted by the Respondent on [REDACTED] 2017 and [REDACTED] 2018, on which Respondent indicated that he did not have any drug related felony convictions. The Applications clearly instructed Respondent to provide true and complete information, as well as the penalties for failing to do so.

Respondent did not truthfully identify his drug-related felony convictions on the Applications for benefits. The Department's evidence establishes by clear and convincing evidence that Respondent was advised of his responsibility to accurately report his circumstances, and that Respondent intentionally withheld information that if properly disclosed, would have made him ineligible for FAP benefits. Under these circumstances, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP.

IPV Disqualification

An individual who is found pursuant to an IPV disqualification hearing to have committed a FAP IPV is disqualified from receiving benefits for the same program for 12 months for the first IPV, 24 months for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. There was no evidence of prior IPV's by Respondent. This was Respondent's first IPV for FAP; therefore, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (October 2016), 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.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$5,458.00 during the fraud period. A review of the IG-150 FAP Benefit Issuance Summary shows that benefits were issued in the amount alleged. Since Petitioner was ineligible for all benefits during this period, MDHHS is entitled to repayment from Respondent of \$5,458.00 in overissued 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. MDHHS has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is subject to a 12-month disqualification from FAP.
3. Respondent received an OI of FAP benefits in the amount of \$5,458.00.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$5,458.00, less any amounts already recouped/collected for the fraud period.

IT IS FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

AMTM/cc



Amanda M. T. Marler
Administrative Law Judge
for Elizabeth Hertel, 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-Wayne-15-Greydale-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent- Via USPS:

