



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: March 19, 2021
MOAHR Docket No.: 20-007548
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 March 8, 2021. Dana Mikko, 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 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 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. Respondent was a recipient of FAP benefits issued by the Department. From July 28, 2015 to November 30, 2019, (fraud period), Respondent was issued \$6,058 in FAP benefits by the State of Michigan and the Department alleges that

Respondent was entitled to \$0 in such benefits during this time period, resulting in an OI of \$6,058.

2. Respondent has two drug-related convictions: (1) on August 27, 2010, he pled guilty to felony-possession of a controlled substance and (2) on January 31, 2014, pled guilty to felony-possession of a controlled substance. (Exhibit A, pp. 50-55).
3. Respondent answered no to the questions asking whether he had any convictions for drug-related felonies that occurred after August 22, 1996 on the [REDACTED], 2015 assistance application he signed and submitted to the Department. (Exhibit A, pp. 9-36)
4. The Department asserted that it also reviewed additional assistance applications completed by Respondent and submitted to the Department on or around [REDACTED], 2016 and [REDACTED], 2017, on which Respondent reported having only one drug felony conviction but did not report being convicted of a drug related felony more than once.
5. The Department asserted that Respondent reported to his caseworker in or around October 2019 that he had a 2010 drug felony conviction in the state of Kentucky. The Department asserted that Respondent failed to disclose his second drug related felony conviction.
6. Respondent was aware of the responsibility to report or disclose his drug related felony convictions and the Department had no reason to believe that Respondent had a physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
7. The Department's OIG filed a hearing request on or around September 15, 2020, alleging that Respondent intentionally withheld or misrepresented information concerning his drug-related felony convictions, and as a result received FAP benefits that he was ineligible to receive, causing an OI of \$6,058.
8. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
9. A notice of hearing was mailed to Respondent at his last known address and was not returned by the US Post Office 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

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). 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.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 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)

In this case, the Department alleges that Respondent committed an IPV of the 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. 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).

For the time period in question (July 2015 through November 2019), Michigan had 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. People convicted of certain crimes and probation or parole violators are not eligible for assistance. In Michigan, Department policy in place at the time of the fraud period provided 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), pp. 1-2.

The Department representative testified that the Department became aware that Respondent had criminal history in the state of Kentucky in or around October 2019. The Department presented documentation from the Hart Circuit Court in Kentucky, detailing Respondent's drug related felony convictions, each of which occurred after August 22, 1996. According to the records provided, Respondent had two drug related felony convictions and each offense occurred after August 22, 1996. Specifically, Respondent had drug convictions after guilty pleas on August 27, 2010 and January 31, 2014, each for felony possession of a controlled substance. (Exhibit A, pp. 31-41).

The cited statutory grounds for the convictions in the documents presented by the Department establish that Respondent had two felony drug convictions. Both convictions have possession, use or distribution of a controlled substance as an element. Because Respondent did not appear at the hearing, there was no evidence to dispute the Department's evidence that Respondent had two drug-related felony convictions for conduct occurring after August 22, 1996. Therefore, the Department established that Respondent had two drug-related felony convictions that made him ineligible for FAP in the State of Michigan for the time at issue.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (January 2015), p.8. The Department presented an assistance application completed and signed by Respondent and submitted to the Department on [REDACTED], 2015, on which he denied having any convictions for drug-related felonies that occurred after August 22, 1996, despite having two convictions at the time. The assistance application clearly instructs Respondent to provide true and complete information, as well as the penalties for failing to do so. Furthermore, the Department representative testified that she reviewed a [REDACTED], 2016 assistance application and an [REDACTED], 2017 assistance application on which Respondent discloses being convicted of a drug-related felony but fails to disclose that he had been convicted more than once.

Therefore, because Respondent did not truthfully identify both of his drug-related felony convictions on the assistance applications he completed, 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

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 established by clear and convincing evidence that Respondent committed an IPV. No evidence of any prior FAP IPVs was presented. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits.

Overissuance

In this case, the Department alleged that Respondent was issued FAP benefits in the total amount of \$6,058 during the July 28, 2015 to November 30, 2019 fraud period. The Department asserted that due to his drug-related felony convictions, Respondent was ineligible for any FAP benefits during this period. A review of the FAP Benefit Summary Inquiry presented by the Department supports benefits issued in the amount alleged. Because, as discussed above, Respondent was ineligible for FAP benefits, as based on policy in place at the time of the fraud period he was subject to a disqualification from the FAP, the Department is entitled to recoup \$6,058 from Respondent, which is the difference between the amount of FAP benefits issued to him and the amount he was eligible to receive during the fraud period.

DECISION AND ORDER

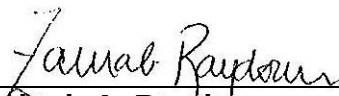
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$6,058.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of \$6,058, 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**.

ZB/jem



Zainab A. Baydoun
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-Shiawassee-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]