



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 23, 2020
MOAHR Docket No.: 20-002873
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 October 20, 2020.

The Department was represented by Arielle King, Regulation Agent of the Office of Inspector General (OIG) with the Department.

Respondent did not appear at the hearing; and it 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).

Department Exhibit A.21 was offered and admitted into the record.

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 for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on May 8, 2020, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits for one year.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to answer all questions truthfully, and that failure to do so can result in an IPV for fraud pursuant to Respondent's acknowledgements on an application for assistance (DHS-1171) signed on ██████████ 2019.
5. On the June 4, 2019 redetermination, Respondent failed to report that he was convicted of drug felonies on ██████████, 2015 and ██████████, 2015. On May 4, 2020, Respondent had a prehearing conference with the Department where he failed to disclose two drug felony convictions.
6. Respondent did not have a physical or mental impairment that would limit his ability to understand his responsibility to fulfill his reporting requirements.
7. On ██████████, 2015, pursuant to a ██████████ County Circuit Court Case, the Court accepted Respondent's guilty plea for a controlled substance-delivery/manufacture pursuant to MCL 3337.4012B-A. Exhibit A.14-17.
8. On ██████████, 2015, the ██████████ County Circuit Court accepted Petitioner's plea for a charge of controlled substance-delivery/manufacture. Exhibits A.16.
9. Respondent has had two or more felony conviction after August 22, 1996.
10. The Department's OIG indicates that the time period it is considering the fraud period is October 28, 2019, through February 29, 2020.
11. During the fraud period, Respondent was ineligibly issued \$801.00 in FAP benefits by the State of Michigan.
12. This is Respondent's first alleged IPV. ■

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 the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking over issuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720, pp 12-13 (January 1, 2016).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 720 p 1; BAM 700, p 6.

An IPV is also suspected of a client who is alleged to have trafficked FAP benefits. BAM 720, p 1.

Under BEM 203, 21 USC 862a and 7 CFR 273.1, and 273.11 an individual can be denied FAP benefits where they failed to disclose two or more felony drug convictions since August 22, 1996 and be penalized with a program disqualification.

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 sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

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, p 15; BEM 708. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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 18. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (April 1, 2016). 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 17.

It is noted that the facts reviewed herein deal with FAP drug felony federal regulations and State of Michigan policy that occurred prior to October 1, 2020. New policy that went into effect October 1, 2020, no longer disqualifies individuals from the receipt of

FAP benefits based on two or more drug felonies unless there is a separate fraudulent claim, which would fall under general IPV guidelines. See ESA 2020-44.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

Recipients are informed and agree pursuant to their signatures on the Acknowledgment Form at application and redetermination that they understand and acknowledge that they are prohibited from receiving benefits in contradiction to the agreements acknowledged on the application regarding residency, misuse, failure to report income and changes to the Department. This includes acknowledgement that a recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

In this case, evidence shows that Respondent acknowledged that he was required to truthfully answer all questions to determine his eligibility, and that failure to do so could subject him to fraud under the Intentional Program Violation FAP law and policy pursuant to acknowledgements Respondent acknowledged these responsibilities on [REDACTED], 2019, on an application.

Evidence further shows that Respondent had two drug-related felony convictions on [REDACTED] 2015 and [REDACTED], 2015. The record indicates that Respondent failed to disclose the drug felonies by affirmatively indicating he had none on May 4, 2020.

Prior to October 1, 2020, an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified from FAP if both convictions were for conduct which occurred after August 22, 1996. BEM 203. See also ESA 2020-44.

Here, the Department has shown that Respondent was not eligible for FAP benefits as he has been prosecuted and found to have committed two or more felony drug convictions for which he failed to disclose, and for which makes him ineligible for the benefits received. Here, the Department requests a finding of a debt in the amount of \$801.00 and a disqualification for one year.

Based on the evidence presented and the credible testimony of the Department, the undersigned Administrative Law Judge found the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter.

DECISION AND ORDER

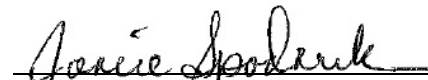
The Administrative Law Judge, based upon clear and convincing evidence of record and the above Findings of Fact and Conclusions of Law, and, for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$801.00.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$801.00 in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of 12 months.

JS/ml



Janice Spodarek
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

OIG – via electronic mail
P.O. Box 30062
Lansing, MI 48909-7562

DHHS

Sharnita Grant
Wayne (Dist 18) County DHHS – via
electronic mail

MDHHS Recoupment – via electronic mail

L. Bengel – via electronic mail

Respondent

[REDACTED] – via first class mail
[REDACTED]
MI [REDACTED]