



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: October 12, 2016  
MAHS Docket No.: 15-026715  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

**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 benefits for FAP?

**FINDINGS OF FACT**

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

1. The Department's OIG filed a hearing request on [REDACTED], 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.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report persons living in her household.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. Post Office 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

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 overissuances 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 or more, or
  - the total amount is less than \$500, 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 (10/1/14), p. 12-13.

### **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.

1

BAM 700 (May 2014), p. 7; BAM 720, p. 1.

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

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 (emphasis in original); see also 7 CFR 273(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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because of her alleged failure to accurately report group composition. The Department alleged that [REDACTED], the father of three of her children, was living with her during the fraud period and as such was required to be reported by the Respondent and also included in the FAP group as a mandatory group member. The Department also alleged that [REDACTED] earned income should have also been included in the Respondent's FAP budget, which would have made the Respondent not entitled to receive FAP benefits due to being over the income limit.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. BAM 105, p. 7. Parents and their children who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (October 1, 2015), p. 2-3. In this case, the Respondent's children were all minor children; and at all times pertinent to this matter, during the fraud period, the Respondent reported the receipt of child support from [REDACTED].

BEM 212, p.3 provides:

**Living with** means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together.

At the hearing, the Department offered the following evidence to establish that [REDACTED] was living with the Respondent and was not reported by the Respondent. The Department presented employment information regarding a form completed by [REDACTED] indicating that on [REDACTED], he reported to an employer that his address was the Petitioner's address. This reporting is before the fraud period ([REDACTED]). The Department also provided an application Respondent completed on [REDACTED]. Exhibit A, p. 31. At that time, the Respondent reported receiving around \$ [REDACTED] income on the application. Exhibit A, p. 14. In addition, the Respondent reported that for the two of her children fathered by [REDACTED] the children spend every other weekend with their father. Exhibit A, p. 15 -17. At the time of the application, the Respondent listed herself and her three children as household members. Exhibit A, p. 20.

Thereafter, the Respondent completed a redetermination, which she completed on December 15, 2012. Exhibit A, p. 36. In the redetermination, she reported that the children spend 26 days per month with her and reported receipt of child support of \$ [REDACTED] each for her two children with [REDACTED]. Exhibit A, p. 31 and p. 38. The amount she reported in Supplemental Security Income (SSI) for one of her children and child support for all three of her children matched the amount of income she reported on her original application, around \$ [REDACTED]. Another redetermination was completed on [REDACTED], by the Respondent at which time she reported another group member because of the birth of another son. Exhibit A, p. 41.

The Department presented a form completed by [REDACTED] for his employer [REDACTED], where he listed the Respondent's address as his home address. The Respondent did not refute the form and correctly indicated that she did not complete it. The Respondent also testified that [REDACTED] lived with relatives and did not have a home of his own and that he lived in [REDACTED], Michigan, for much of the time. A similar form completed by [REDACTED] in [REDACTED] also listed the Respondent's address. Exhibit A, p. 46. This form is also before the fraud period. On [REDACTED], [REDACTED] also completed a form for his employer stating he lived at [REDACTED]. Exhibit A, p. 47.

The Department also presented a vehicle registration completed [REDACTED], using the Respondent's address as the address where the vehicle was registered. In addition, the Department presented a [REDACTED], driver's license listing the Respondent's address on [REDACTED], which was also prior to the fraud period.

Apparently, the Department regulation agent conducted a Fee Investigation but did not provide the report he completed at which time he spoke to [REDACTED] and [REDACTED]. [REDACTED] recalled the encounter and advised the investigator that [REDACTED] lived with her one day a month when he helped with the children so she could go to doctor's appointments and avoid daycare costs. The Department could not recall specifically what he was told by the Respondent but he testified that he understood that [REDACTED] lived at Respondent's one day a month, which required that [REDACTED] had to be added to the group. Thus, the Department added [REDACTED] based upon him living at Respondent's one day a month. [REDACTED] also testified that she told the investigator that [REDACTED] was not living in the house.

Throughout the period in question, the Respondent reported receiving voluntary child support from [REDACTED] to support their children. All of the OI budgets completed include this child support and reference Bridges records. The Respondent testified that she submitted written statements to the Department throughout the period reporting the receipt of child support by her from [REDACTED] for their children. The Department did not look at or present the child support page from the Bridges system as regards child support received. The receipt of child support by Respondent supports the Respondent's testimony that [REDACTED] did not live with her, as generally, child support is not paid when a parent is living in the household. Further, the definition of

Living With referenced above requires more than one day a month to establish that [REDACTED] was living in the Respondent's home. BEM 212.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department argued that Respondent did reside with [REDACTED] but much of the evidence was based upon pre-fraud period evidence and a car registration and a driver's license registration. In that regard, [REDACTED] stated that she used [REDACTED] car when hers broke down; and due to insurance, her address was used. The undersigned finds that the Department failed to establish its burden of showing that Respondent did reside with [REDACTED] during the alleged fraud period. Because the OIG Agent failed to satisfy its burden of showing that [REDACTED] did reside with the Respondent and failed to report him as a mandatory group member during the alleged fraud period, it failed to show by clear and convincing evidence that Respondent intentionally withheld her group composition information for the purpose of maintaining Michigan FAP eligibility. The Department has failed to establish that Respondent committed an IPV of FAP benefits.

### **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. 1; BEM 708 (April 2014), p. 1. 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. 16. 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. 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. 16.

In this case, because the Department did not meet its burden to establish an IPV showing the Respondent committed an IPV of her FAP benefits, the Department is not entitled to the imposition of any disqualification as requested.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In the present case, the Department alleged that Respondent failed to accurately report group composition when she failed to list the father of several of her children as living with her on her application and subsequent redeterminations. As such, the Department argued that Respondent received an OI of FAP benefits because she should have received no FAP benefits when [REDACTED] income was included in the group

earned income. However, as stated in the previous analysis, the Department failed to establish its burden of showing that [REDACTED] did reside with Respondent during the alleged OI period. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of FAP program benefits in the amount of \$ [REDACTED] for the period of [REDACTED].

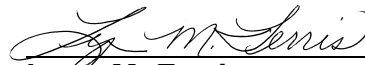
### DECISION AND ORDER

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 not** receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the OI and cease any recoupment action.

LMF/jaf



**Lynn M. Ferris**

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]

**Via email**

[REDACTED]