



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: June 7, 2016  
MAHS Docket No.: 15-007958  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Michael J. Bennane**

**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).

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).

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) and 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 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 notify the Department of any changes in his circumstances that might affect his benefits.
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], and [REDACTED], for FAP and [REDACTED], for the MA OI (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in MA 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] and \$ [REDACTED] in MA benefits.
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 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

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 (October, 2014), p. 12.

### **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 700 (May, 2014), p. 7; BAM 720, p. 2.

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, Respondent completed DHS-1171 online application on [REDACTED], [REDACTED] and acknowledged his obligation to report changes in circumstances. He applied for FAP and MA benefits for himself and two children and claimed that he was separated from his wife, [REDACTED].

Respondent was sent a DHS-1605 Notice of Case Action dated [REDACTED]. The Notice advised the Respondent that he and his household were approved for FAP and MA starting [REDACTED]. The Notice also showed the FAP budget, which allowed the Respondent to see the deductions and utility standards allowed and that no earned income was being budgeted.

According to the Bridges Case Comments – Summary page, the Eligibility Specialist (ES) noted on [REDACTED], that Respondent had emailed her and asked that his wife be added to his group as she had moved back home. He reported that she had no income. There were no comments in the summary indicating that he had reported his employment with [REDACTED] to the Department. [REDACTED] was added to the household. The Respondent was mailed another Notice of Case Action on [REDACTED], advising him report to Child Support that his wife was back in the home. The MA and FAP benefits eligibility was shown as well as the FAP budget, which showed no earned income being budgeted.

A review of the Work Number verified that subject's employment with [REDACTED] had begun on [REDACTED], and ended [REDACTED]. The Work Number also verified that [REDACTED] had employment with [REDACTED] which had begun on [REDACTED], through [REDACTED]. Her address of record with the employer was [REDACTED].

There was no record of either employments being reported. The Respondent signed the DHS Redetermination Form on [REDACTED], and acknowledged his obligation

to report changes in circumstances. [REDACTED] was no longer listed in the household, and he reported that the household had no income. The Respondent's FAP and MA closed on [REDACTED], due to his failure to return required information. The agent conducted a search of the MI Secretary of State Driver Records on [REDACTED] in an effort to find a current address for subject. The records indicated that he had a driver license current at [REDACTED].

While awaiting a response from the Respondent after the interview letter and repayment packet was sent, Agent checked the Respondent's EBT purchase history on [REDACTED], [REDACTED]. It revealed that all of Respondent's food purchases, with the exception of four, had occurred outside of Michigan, mainly in [REDACTED], from [REDACTED], through [REDACTED]. Agent contacted [REDACTED] Elementary School in [REDACTED] Michigan, on [REDACTED], and spoke with [REDACTED], the school secretary. She verified that [REDACTED] had received a letter request on [REDACTED], from [REDACTED] Elementary School in [REDACTED]. The letter was signed by Respondent's wife, [REDACTED], on [REDACTED]. The letter requested that [REDACTED] send the school records of [REDACTED] to [REDACTED] Elementary. [REDACTED] Elementary responded to Agent's subpoena for [REDACTED] n and [REDACTED] school enrollment records on [REDACTED]. The records verified that [REDACTED] was registered at [REDACTED] Elementary on [REDACTED] and [REDACTED] was registered on [REDACTED], and are currently attending. Parents are listed as Respondent and [REDACTED].

In the instant case, the Respondent was in violation of Departmental policy by moving out of the State of Michigan without notifying the Department. He and his wife were both in violation of Departmental policy for failure to provide documentation of employment and income. Both of these violations constitute an IPV.

#### The MA Issue

The Department has presented documentation of capitation/premium expenses for medical coverage. State and federal law allows the recoupment of expenses for "medical services." This ALJ can find no reference showing that capitation rates constitute medical services.

In light of this, the undersigned ALJ fails to find the MA capitation/premium rates to be part of an OI or recoupment.

#### The FAP issue

The Respondent failed to notify the Department of his move out of state and this is in violation of the residency restrictions in (BEM220).

#### 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. 12. 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. 13. 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, this is the Respondent's first alleged IPV; and the Department is requesting a disqualification period of 12 months.

**Overissuance**

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

In this case, the Department has documented an OI of FAP benefits in the amount 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** 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 \$ [REDACTED]

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

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

MJB/jaf

  
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**Michael J. Bennane**  
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]

**cc:**

[REDACTED]