



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: [REDACTED]  
MAHS Docket No.: 15-016684  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

**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 Respondent. [REDACTED], Respondent's husband also appeared. .

**ISSUES**

1. Did Respondent receive an overissuance (OI) of 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 report changes in income and/or employment.
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] through [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$3,821.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,821.00.
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 US 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.

Prior to [REDACTED], 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 (August 2012), p. 10.

### **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 (December 2011), p. 6; 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 she failed to notify the Department when she returned to work, and also failed to report an income source for her husband. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV of her FAP benefits, the Department presented an application Respondent submitted to the Department on [REDACTED]; a Redetermination submitted on [REDACTED] and a Redetermination submitted on [REDACTED], in which Respondent acknowledged that she had received the Information Booklet advising her regarding “Things You Must Do”, which explained reporting change circumstances including employment. However, this is not dispositive to show Respondent’s intent to withhold information for the purpose of receiving or maintaining FAP benefits.

Additionally, the Department presented documentation to show that Respondent returned to her work at [REDACTED] in [REDACTED]. The Department asserted that Respondent failed to report this income. A review of the [REDACTED] Redetermination appears to show that the employment was initially report but was crossed out. Respondent denied that she crossed out the information. Typically, a Redetermination is followed up by a telephone interview. There were clearly markings on the document that were made by someone other than Respondent. For instance, Respondent’s husband’s rental income was added. Respondent acknowledged that her husband had rental income at the time. This income does not appear to have been initially reported but later placed on the document, likely by Respondent’s worker.

A review of Respondent’s pay history with [REDACTED] reveals that on [REDACTED], she was not working; but was on a break. It is possible that the lack of work during that specific timeframe was communicated to Respondent’s worker and subsequently crossed out. Respondent acknowledged that one source of her husband’s income was not reported at all. Respondent was unable to explain why she failed to report the income, but said that it was unintentional. Respondent denied any intent to mislead the Department or to conceal information for the purpose of receiving or maintaining benefits. Respondent’s testimony is found credible, given that she reported other income and appears to have intended to report the income with [REDACTED]. Accordingly, it is found that the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

**Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

**Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department has alleged that Respondent was issued \$3,821.00 in FAP benefits during the fraud period. The Department has indicated that the fraud period began in [REDACTED]. However, under the Standard of Promptness, the undersigned finds that the correct starting period for a potential overissuance is [REDACTED] given that the first instance of failure to report arose out of Respondent's husband's employment which began on [REDACTED]. See BAM 705 ([REDACTED]), pp. 4-5; BAM 715 ([REDACTED]), pp. 3-4. As such, [REDACTED] will not be considered as a month of potential overissuance.

The Department submitted budgets which revealed that Respondent would have been entitled to \$0.00 in FAP benefits if the earned income had been reported timely. The gross income limit for a group size of four at the time of the fraud period was \$3,726.00. The Department used different gross limit income amounts on the various budgets submitted. However, the gross income limit for a group size of four at the time of the fraud period was \$3,726.00. RFT 250 (October 2011), p. 1.

The budgets for [REDACTED], [REDACTED], [REDACTED], [REDACTED] revealed that the household income exceeded the gross income limit and as such, the group was not entitled to any FAP benefits during these months. For [REDACTED], the budgets presented by the Department revealed that although the household income did not exceed the gross income limit, the household did exceed the net income limit for each month. RFT 260 ([REDACTED]), p. 20. Excluding [REDACTED], it is found that the Department has established that an overissuance occurred in the amount of \$2,829.00, and it is therefore entitled to recoup that amount for FAP benefits it issued to Respondent relating to FAP benefits received between [REDACTED].

**DECISION AND ORDER**

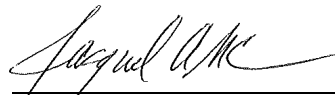
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.
2. Respondent did receive an OI of program FAP benefits in the amount of \$2,829.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,829.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to disqualification from FAP benefits.

JM/hw



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**Jacquelyn A. McClinton**  
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 [REDACTED] 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]