



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 29, 2016  
MAHS Docket No.: 15-018813  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Eric J. Feldman**

**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 June 6, 2016, 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 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 changes in income.
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 \$838 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 \$838.
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.

Effective October 1, 2015, 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 2015), pp.12-13; ASM 165 (May 2013), pp. 1-7.

### **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 (October 2015), 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 his FAP benefits because he failed to timely report his employment income (earned income) to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

Income reporting requirements are limited to the following:

- Earned income:
  - Starting or stopping employment.
  - Changing employers.
  - Change in rate of pay.
  - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 9.

First, the Department presented Respondent's application dated [REDACTED], to show that the Respondent was aware of his responsibility to report changes as required. See Exhibit A, pp. 11-32.

Second, the Department presented Respondent's redetermination received and signed by Respondent on [REDACTED], which was prior to the alleged fraud period. See Exhibit A, pp. 33-38. In the redetermination, Respondent reported no earned income, even though the Department argued that he was employed at the time. See Exhibit A, pp. 36 and 45

Third, the Department presented Respondent's online change report dated [REDACTED], [REDACTED] which was submitted during the alleged fraud period. See Exhibit A, pp. 39-42. In the change report, Respondent reported his income and the Department indicated that this was the first time it became aware of the income. See Exhibit A, p. 42. Moreover, Respondent reported his job start date was [REDACTED] and he worked 15 hours a week; however, the employment verification indicated that he was hired on [REDACTED] and worked more than 15 hours a week. See Exhibit A, pp. 42-45. But, Respondent did properly report his rate of pay being \$5.70/hour. See Exhibit A, pp. 42 and 45.

Fourth, the Department presented Respondent's employment verification, which showed that he received wages from [REDACTED], and [REDACTED]. See Exhibit A, p. 45. Respondent did not receive any wages for October 2014. See Exhibit A, p. 45.

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.

First, the Department presented Respondent's redetermination received and signed by Respondent on [REDACTED]; however, this was submitted before the alleged fraud period, even though the Department argued that he failed to report that he was employed at the time. See Exhibit A, pp. 33-38, and 45. This document failed to show that Respondent, during the alleged fraud period, misrepresented or intentionally withheld his income information.

Nonetheless, the evidence established that Respondent eventually reported his income. In this case, the Department presented Respondent's online change report dated [REDACTED], which was submitted during the alleged fraud period. See Exhibit A, pp. 39-42. In the change report, Respondent reported his income and this was the first time the Department became aware of it. See Exhibit A, p. 42. Moreover, the Department argued that Respondent misrepresented his employment start date and hours worked. Specifically, Respondent reported that he began his employment on [REDACTED] and worked 15 hours a week, even though the evidence established that he was hired on [REDACTED] and that he worked more than 15 hours a week. See Exhibit A, pp. 42-45. But, the evidence also showed that Respondent properly reported his rate of pay being \$5.70/hour. See Exhibit A, pp. 42 and 45. Based on this information, the undersigned finds that the OIG agent fails to show by clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of maintaining his FAP eligibility. The evidence is persuasive to show that Respondent did not report his income timely, which means that an overissuance is present. See BAM 105, p. 9. However, the undersigned finds that this case does not rise to the level of an IPV. In the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or 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. 15; 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, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

### **Overissuance**

The evidence established that no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (October 2015), p. 1.

A client error is present in this situation because Respondent failed to timely notify the Department of his earned income. In regard to policy, the evidence established that Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9. Thus, an OI is present in this case.

Applying the overissuance period standards, it is found that the Department applied the appropriate OI begin date of [REDACTED]. See BAM 720, p. 7 and Exhibit A, pp. 4 and 45.

Additionally, 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 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 this case, the Department presented OI budgets for July 2014 to September 2014 and January 2015 to February 2015. See Exhibit A, pp. 47-57. The budgets included Respondent's income that was not previously budgeted. See Exhibit A, p. 45. A review of the OI budgets found them to be fair and correct, except for January to February 2015. For January 2015, the Department budgeted income received for [REDACTED] in the amount of \$498.41. See Exhibit A, p. 54. However, the employer verification fails to show any income actually received for [REDACTED]. See Exhibit A, p. 45. Thus, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits for January 2015. BAM 720, pp. 8 and 10. For February 2015, the Department failed to provide evidence that Respondent actually received a FAP allotment for February 2015. See Exhibit A, p. 46 (Benefit Summary Inquiry only shows FAP benefits received for the period of July 2014 to January 2015

and no issuance for February 2015). Thus, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits for February 2015. BAM 720, pp. 8 and 10. Nonetheless, the Department is entitled to recoup \$482 of FAP benefits it issued for [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** receive an OI of FAP program benefits in the amount of \$482

The Department is **ORDERED** to reduce the OI to \$482 for the period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

EF/hw

  
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**Eric J. Feldman**

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]