



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: July 29, 2016  
MAHS Docket No.: 15-026462  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Kevin Scully**

**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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on July 19, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of the Respondent included: [REDACTED] and [REDACTED].

**ISSUES**

1. Did the 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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should the Respondent be disqualified from the Food Assistance Program (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. On January 21, 2014, the Respondent reported to the Department that she had moved to Canton, Michigan. Exhibit A, pp 11 – 14.

2. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Michigan from May 11, 2013, through June 2, 2013. Exhibit A, p 17.
3. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Kentucky from June 2, 2013, through Jun 20, 2013. Exhibit A, pp 17.
4. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Michigan from June 23, 2013, through July 7, 2013. Exhibit A, p 18.
5. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Kentucky from July 7, 2013, through August 12, 2013. Exhibit A, p 18.
6. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Michigan from August 18, 2013, through August 25, 2013. Exhibit A, p 18.
7. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Kentucky from August 27, 2013, through October 28, 2013. Exhibit A, pp 18 – 19.
8. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Kentucky from November 13, 2013, through July 14, 2014. Exhibit A, pp 19 – 22.
9. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Michigan from July 11, 2014, through August 23, 2014. Exhibit A, pp 22 – 23.
10. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Kentucky from August 25, 2014, through September 26, 2014. Exhibit A, pp 23 – 24.
11. The Respondent used her Food Assistance Program (FAP) benefits exclusively in Michigan from October 11, 2014, through December 21, 2014. Exhibit A, pp 24 – 26.
12. The Respondent was a Food Assistance Program (FAP) recipient from May 1, 2013, through October 31, 2015. Exhibit A, pp 17 – 32.
13. The Respondent was a Food Assistance Program (FAP) recipient from January 1, 2014, through June 30, 2014, receiving benefits totaling \$ [REDACTED] Exhibit A, pp 15 – 16.
14. On December 14, 2015, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, p 6 – 9.
15. This was Respondent's first alleged IPV.

16. The Department's OIG filed a hearing request on December 14, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.

17. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**
  - the total OI 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.

Department of Health and Human Services Bridges  
Administrative Manual (BAM) 720 (January 1, 2016), pp 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.

Department of Health and Human Services Bridges  
Administrative Manual (BAM) 700 (January 1, 2016), 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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. 16.

### **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.

To be eligible for Food Assistance Program (FAP) benefits, a person must be a Michigan resident. A person is considered a resident under the Food Assistance Program (FAP) while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2016), p 1.

The Respondent was a FAP recipient from May 1, 2013, through October 31, 2015. During this period, the Respondent used her FAP benefits in Michigan and Kentucky. From January 1, 2014, through June 30, 2014, the Respondent received FAP benefits totaling \$ [REDACTED]. The Department alleges that the Respondent no longer had the intent to remain a Michigan resident from January 1, 2014, through June 30, 2014, and therefore was not eligible for any of those benefits. The Department alleges that the Respondent intentionally did not report her absences from Michigan for the purposes of maintaining her eligibility for FAP benefits that she would not have been eligible for otherwise.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if

evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

The Department failed to present any evidence that the Respondent acknowledged her responsibility to report when she was absent from Michigan. The Department failed present any evidence that the Respondent was aware of or should have been aware that she was required to report her absences from Michigan.

The Respondent testified under oath that she was not aware that she was required to report her absence from Michigan to the Department. The Respondent's absences are documented by the periods where she exclusively used her FAP benefits in Kentucky. The Respondent testified that she was only visiting Kentucky temporarily during her absences from Michigan and that she intended to remain a Michigan resident.

A person who is temporarily absent from the group is considered living with the group. Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2015), p 3.

Since the Department did not cite this policy on its Hearing Summary under manual items used in taking its action, it is not clear whether the Department alleged that the Respondent's absences from Michigan were not considered temporary.

However, this Administrative Law Judge finds BEM 212 not to be relevant to the Respondent's circumstances. The Department failed to present evidence to establish the size of the Respondent's benefit group. Despite the lack of evidence of the group size, it is apparent based on the FAP benefits received each month that the benefit group consisted of more than the Respondent. This Administrative Law Judge finds that BEM 212 applies to determinations as to who should be considered to be a member of the benefit group and not the residency of the entire group. Further, BEM 212 provides instruction as to whether a person should be removed from the benefit group, not whether the entire group has left Michigan temporarily.

No evidence was presented on the record concerning the Respondent's living situation during the period she used her FAP benefits in Michigan. On January 21, 2014, the Respondent reported to the Department that she was living at a Michigan address. The Department failed to establish that during the periods that the Respondent was using her benefits in Kentucky that she was not maintaining her Michigan address as her home, paying for utilities at this home, or paying property taxes in Michigan.

It is not against Department policy to use FAP benefits in another state so long as the recipient still meets all of the eligibility criteria for the FAP program. The exclusive use of FAP benefits in another state for extended periods of time is evidence of a lack of intent to remain a Michigan resident, but in this case, the Respondent established a pattern of benefit use in both Michigan and Kentucky. Based on the evidence presented on the record, the Respondent's intent cannot be determined without hesitancy of the truth of the precise facts in issue.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

This Administrative Law Judge finds that the Department has failed to present clear and convincing evidence that the Respondent committed an intentional program violation. The Department failed to establish that Respondent acknowledged or was aware of the requirement that remaining a Michigan resident was an eligibility requirement of receiving FAP benefits. Further, the Department failed to establish that Respondent did not intend to remain a Michigan resident during her absences from Michigan.

### **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 the Respondent committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

KS/las

  
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**Kevin Scully**  
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

**Petitioner**

[REDACTED]

**DHHS**

[REDACTED]

[REDACTED]

**Respondent**

[REDACTED]