



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 12, 2016  
MAHS Docket No.: 16-005341  
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 June 23, 2016, from Lansing, 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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 an application for assistance dated August 6, 2008, the Respondent acknowledged the duty to report to the Department all income received by the benefit group. Exhibit A, p 12 – 26.

2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. The Respondent reported to the Department on her August 6, 2008, application for benefits that her employment had ended and that she would receive her final pay on August 8, 2008. Exhibit A, pp 19 – 20.
4. The Respondent was employed from September 14, 2009, through June 27, 2010, but did not report the earned income she received to the Department. Exhibit A, pp 28 – 29.
5. The Respondent was a Food Assistance Program (FAP) recipient from November 1, 2009, through June 30, 2010, receiving benefits totaling \$ [REDACTED] Exhibit A, pp 45 – 50.
6. If the Respondent's earned income had been reported to the Department within 10 days of its start on September 14, 2009, this would have affected her eligibility to receive benefits on November 1, 2009, and she would have only received benefits totaling \$ [REDACTED] through June 30, 2010. Exhibit A, pp 52 – 59.
7. On July 12, 2010, the Respondent reported to the Department on a Redetermination (DHS-1010) from that she had been laid off from her employment. Exhibit A, pp 37 – 40.
8. The Respondent did not work from June 17, 2010, through August 2, 2010, but did work from August 2, 2010, through January 23, 2011, without reporting this income to the Department. Exhibit A, pp 29 – 31.
9. The Respondent was a Food Assistance Program (FAP) recipient from October 1, 2010, through January 31, 2011, receiving benefits totaling \$ [REDACTED] Exhibit A, pp 45 – 50.
10. If the Respondent's earned income had been reported to the Department within 10 days of its start on August 2, 2010, this would have affected her eligibility to receive benefits on October 1, 2010, and she would have only received benefits totaling \$ [REDACTED] through January 31, 2011. Exhibit A, pp 61 – 64.
11. On June 27, 2011, the Respondent reported to the Department on a Redetermination (DHS-1010) form that she would start employment on March 7, 2011. Exhibit A, pp 41 – 44.
12. The Respondent failed to report starting work on March 13, 2011, until June 27, 2011, which was not timely to affect her eligibility for FAP benefits through July 31, 2011. Exhibit A, pp 32 – 36.
13. The Respondent was a Food Assistance Program (FAP) recipient from May 1, 2011, through July 31, 2011, receiving benefits totaling \$ [REDACTED] Exhibit A, pp 45 – 50.

14. If the Respondent's earned income had been reported to the Department within 10 days of its start on March 13, 2011, this would have affected her eligibility to receive benefits on May 1, 2011, and she would not have been eligible for any of the food assistance she received through July 31, 2011. Exhibit A, pp 65 – 67.
15. On January 13, 2016, 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, pp 6 – 9.
16. This was Respondent's second alleged IPV, having been convicted of felony welfare fraud in 1996. Exhibit A, p 73.
17. The Department's OIG filed a hearing request on January 13, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
18. A notice of hearing was mailed to Respondent at the last known address and was 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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This includes report starting or stopping employment and all earned income received. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2015), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (April 1, 2016), p 11. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (April 1, 2016), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On an application for assistance dated August 6, 2008, the Respondent acknowledged the duty to report all changes of employment. The Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.

The Respondent reported that she had been laid off from her employment on her August 6, 2008, application but then failed to report that she started working on September 14, 2009, and continued to work through June 27, 2010. If the Respondent had reported her earned income to the Department in a timely manner, she would have only been eligible for \$ [REDACTED] of the \$ [REDACTED] of FAP benefits that she received from November 1, 2009, through June 30, 2010. Therefore, the Respondent received a \$ [REDACTED] overissuance of FAP benefits during this period.

On July 12, 2010, the Respondent reported that she had been laid off from her employment but then failed to report starting work on August 2, 2010, which continued through January 23, 2011. If the Respondent had reported her earned income to the Department within 10 days of its start, she would have only been eligible for \$ [REDACTED] of the \$ [REDACTED] of FAP benefits that she received from October 1, 2010, through January 31, 2011. Therefore, the Respondent received a \$ [REDACTED] overissuance of FAP benefits during this period.

On June 27, 2011, the Respondent reported to the Department that she had restarted employment, but this was not a timely report with respect to the earned income she received from March 13, 2011, through June 27, 2011. If the Respondent had reported earned income with 10 days of its start on March 13, 2011, she would not have been eligible for any of the \$ [REDACTED] of FAP benefits she received from May 1, 2011, through July 31, 2011. Therefore, the Respondent received a \$ [REDACTED] overissuance of FAP benefits during this period.

The Respondent was aware or should have been aware of her duty to report all changes in employment status and changes in income received during each of the three periods of receiving FAP benefits described above. The Respondent apparently had no difficulty reporting periods when she had been laid off from work, but consistently failed to report re-starting employment, which caused her to receive overissuances of FAP benefits. The evidence presented on the record supports the Department's determination that the Respondent failed to report changes to her monthly income for the purposes of maintaining her eligibility to receive FAP benefits that she would not have been eligible for otherwise.

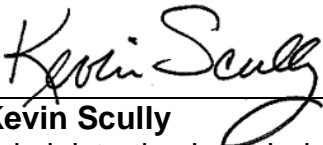
This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report to the Department the income she received for the purpose of maintaining her eligibility for Food Assistance Program (FAP) benefits that she would not have been eligible for otherwise. The Department has also established that this is the Respondent's second period of IPV having previously been found guilty of welfare fraud, which justifies the 24 month disqualification period.

**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 Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 24 months.

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]