



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: December 14, 2016  
MAHS Docket No.: 16-009181  
Agency No.: 1 [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

**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 November 15, 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).

**ISSUE**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV).
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) by making a fraudulent statement or representation regarding her identity or residence in order to receive multiple Food Assistance Program benefits simultaneously?
3. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
4. Did Respondent receive an over-issuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On May 15, 2013, Respondent began receiving Food Assistance Program (FAP) benefits through Georgia. She continually received Food Assistance Program (FAP) benefits through Georgia until April 1, 2015. Department's Exhibit A pages 43 & 44.
2. On February 12, 2014, Respondent submitted an online Assistance Application (DHHS-1171) for Food Assistance Program (FAP) and Medical Assistance (MA) benefits to the state of Michigan. In the application Respondent indicated she was homeless and residing with her two sons. Respondent misrepresented herself as not receiving any type of income, including Food Assistance Program (FAP) benefits. Respondent electronically signed the affidavit in the Assistance Application (DHS-1171) certifying that the information provided was true and that she received notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
3. Respondent was determined to be eligible for Food Assistance Program (FAP) and Medical Assistance (MA) benefits through Michigan. Respondent was issued Food Assistance Program (FAP) benefits from February 13, 2014 through April 30, 2015.
4. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to provide true and accurate information or fulfill the reporting requirement.
5. Respondent committed an Intentional Program Violation (IPV) by making a fraudulent statement or representation regarding her residence status and circumstances in order to receive multiple Food Assistance Program benefits simultaneously.
6. In accordance with Department policy February 13, 2014 to April 30, 2015 has been determined as a correct Food Assistance Program (FAP) over-issuance period associated with this Intentional Program Violation (IPV).
7. During the over-issuance period Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.
8. This is Respondent's 2<sup>nd</sup> Food Assistance Program (FAP) Intentional Program Violation (IPV).
9. The Department did not meet the evidentiary burden of showing a Medical Assistance (MA) Intentional Program Violation or over-issuance.

## **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 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.

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 Bridges Administration Manual (BAM) 720 Intentional Program Violation version in effect at the time of the events in question governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

## **INTENTIONAL PROGRAM VIOLATION**

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

#### **Medical Assistance (MA)**

In this case, the Department presented a Medical Assistance (MA) Assistance Application (DHS-1171), dated February 12, 2014, which Respondent submitted to the Department. In the application Respondent indicated she was homeless and residing with her two sons. The only other evidence regarding Medical Assistance (MA) in the record is a listing of medical services for one of Respondent's sons, [REDACTED], paid between February 1, 2014 and October 1, 2015. Department's Exhibit A pages 55-58. This evidence is not sufficient to establish that Respondent committed a Medical Assistance (MA) Intentional Program Violation (IPV) or that she received a Medical Assistance (MA) over-issuance.

#### **Food Assistance Program (FAP)**

In this case, the Department presented evidence which shows that Respondent began receiving Food Assistance Program (FAP) benefits through Georgia on May 15, 2013 and continued to receive Food Assistance Program (FAP) benefits through Georgia until April 1, 2015.

The Department also presented a Food Assistance Program (FAP) Assistance Application (DHS-1171), dated February 12, 2014, which Respondent submitted to the Department. In this application Respondent did not report that she was receiving any income, including Food Assistance Program (FAP) benefits.

Respondent committed an Intentional Program Violation (IPV) by intentionally making a fraudulent statement or representation regarding her residence status and receipt of Food Assistance Program (FAP) benefits through Georgia, in order to receive multiple Food Assistance Program benefits simultaneously

## **OVER-ISSUANCE**

### **Over-issuance Period**

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case, the Department submitted evidence showing that Respondent was already receiving Food Assistance Program (FAP) benefits through Georgia at the time she began receiving them through Michigan. Respondent was not eligible for Food Assistance Program (FAP) benefits through Michigan so all of the Food Assistance Program (FAP) issuance period is correctly an over-issuance period.

### **Over-issuance Amount**

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$[REDACTED] in Food Assistance Program (FAP) benefits during the over-issuance period. Respondent was not eligible for Food Assistance Program (FAP) benefits through Michigan. Respondent received a \$[REDACTED] over-issuance of Food Assistance Program benefits during the over-issuance period.

### **Disqualification**

BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications (2015) at page 1, states:

A person is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or

DHS-830, Disqualification Consent Agreement,) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously.

### **DECISION AND ORDER**

#### **Medical Assistance (MA)**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department HAS NOT established that Respondent committed a Medical Assistance (MA) Intentional Program Violation (IPV) or that she received a Medical Assistance (MA) over-issuance.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are REVERSED with regard to Respondent's Medical Assistance (MA).

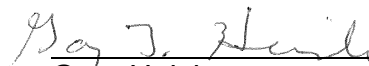
#### **Food Assistance Program (FAP)**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) by making a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously. That Food Assistance Program (FAP) Intentional Program Violation (IPV) resulted in a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 2<sup>nd</sup> Food Assistance Program (FAP) Intentional Program Violation (IPV). The Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits for a period of ten years in accordance with Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHeld with regard to Respondent's Food Assistance Program (FAP).

GH/nr



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Gary Heisler  
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]

**Respondent**

[Redacted]