



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 8, 2016  
MAHS Docket No.: 16-010994  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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).

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 Food Assistance (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 of address.
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 issued a Notice of Case Action on [REDACTED] notifying the Respondent that his FAP benefits had decreased. The Notice advised the Respondent that he was required to report changes including changes in address. Exhibit A, p. 20.
7. Based upon Petitioner's Electronic Benefits Transfer (EBT) FAP purchases, the Respondent began using his Michigan FAP benefits out of state on [REDACTED], in the State of [REDACTED] Exhibit A, p. 23.
8. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
9. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
11. This was Respondent's **first** alleged IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. 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 January 1, 2016, 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 (1/1/16), 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.

BAM 700 (May 1, 2014), p. 7; BAM 720, (May 1, 2015), 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. 6 (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 Respondent applied for FAP on [REDACTED]. Thereafter, based upon the Respondent's EBT usage history, Respondent began to use his FAP benefits out of state in [REDACTED] and continued out of state use thereafter through [REDACTED]. Exhibit A, p. 29. The Department sent the Respondent a Notice of Case Action on [REDACTED], that advised the Respondent that he had to report changes including changes of address. Thereafter, the Respondent's EBT transaction history demonstrates that Respondent began use of his benefits in [REDACTED] also on [REDACTED]. Exhibit A, p. 23. The Respondent did not report his change of address to the Department. The Respondent did advise the OIG Agent that he was in [REDACTED] with his children, who began school in the [REDACTED] school year. Exhibit A.

To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (7/1/14), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (7/1/14), pp. 2-3.

Based upon this evidence, it is determined that it was insufficient to establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information concerning his residency for the purpose of establishing and continuing his Michigan FAP eligibility and while he failed to report his [REDACTED] location and address, he did not misrepresent any information to the Department, such as report a Michigan address when completing a Redetermination while in [REDACTED]. Thus, the Department has not established that Respondent committed an IPV concerning his FAP benefits.

### **Disqualification**

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 16-16; BEM 708 (April 1,

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. 1-2. 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, because the Department did not establish an IPV, the Department is not entitled to a finding of disqualification from the FAP program due to an IPV.

### **Overissuance**

When a client group receives more benefits than 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 client actually received minus the amount the client was eligible to receive. Bam 700, p. 1; BAM 720, p. 8; BAM 715 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented an FAP transaction history that established that Respondent used Michigan-issued FAP benefits out of state from [REDACTED]. In the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was was not eligible for FAP benefits issued by the Department.

In this case, the Department alleges that Respondent was overissued FAP benefits for the period from [REDACTED]. The Department presented a Benefit Summary Inquiry to support issuances during this period totaling \$ [REDACTED]. Once the Respondent no longer resided in Michigan, he was not entitled to FAP benefits. Although benefit use outside the state of Michigan began [REDACTED], the Department properly applied credit for the 10-day reporting period, 10-day processing period and the 12-day notice period.

Because the Department properly calculated the first month of the OI period to begin [REDACTED], see BAM 720, p. 7, and established the amount issued during the fraud period, the Department is entitled to recoup or collect \$ [REDACTED] from Respondent for FAP benefits it issued to Respondent from [REDACTED].

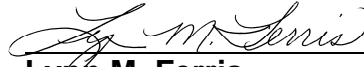
### **DECISION AND ORDER**

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 benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

LMF/jaf



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**Lynn M. Ferris**

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]

[REDACTED]