



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: December 22, 2016  
MAHS Docket No.: [REDACTED]  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

### **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). The Respondent was represented by Respondent.

### **ISSUES**

1. Did Respondent receive an overissuance (OI) of FAP and FIP 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) of FIP and FAP benefits?
3. Should Respondent be disqualified from receiving FAP and FIP benefits for 12 months?

### **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 any felony drug convictions occurring after [REDACTED].
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] through [REDACTED] (FAP fraud period).
7. 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (FIP fraud period).
10. During the fraud period, Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FIP benefits in the amount of [REDACTED].
12. This was Respondent's first alleged IPV for both programs.
13. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 (January 2016), p. 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 (January 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). 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.

The Department alleged that Respondent committed an IPV of her FAP and FIP benefits because she failed to report that her Living Together Partner (LTP) had been convicted of two felonies after [REDACTED]. In support of its contention that Respondent committed an IPV of FIP and FAP benefits, the Department presented two applications submitted by Respondent to the Department on [REDACTED], in which Respondent acknowledged that she had received the Information Booklet advising her regarding “Things You Must Do” which explained reporting requirements for criminal convictions, probation and/or parole violations.

In each of the applications, Respondent listed her LTP as living in the home and also indicated that no one in the household had been convicted of a drug-related felony since [REDACTED]. Respondent testified that when she completed the application she was truthful. Respondent indicated that the [REDACTED] conviction occurred prior to meeting her LTP and that while she was aware of the [REDACTED] conviction, she believed it to be a misdemeanor. Respondent indicated that she and her LTP were residing together at the time of hearing. Respondent’s LTP did not appear at the hearing. There was no evidence provided which demonstrated that Respondent knew or should have known of her LTP’s prior criminal history. Accordingly, it is found that the Department failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP benefits.

### **Disqualification**

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

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP and FIP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP and FIP benefits.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. As previously stated, individuals convicted of certain crimes, such as trafficking and drug-related felonies; probation or parole violators; and fugitive felons are not eligible for FAP or SDA assistance. BEM 203 (January 2015), p. 1.

In this case, the Department is seeking an FAP overissuance related to benefits issued from [REDACTED]. The Department alleged that the FAP OI amount is [REDACTED]. The Department presented Respondent's benefit summary inquiry which showed that Respondent was issued FAP benefits during the fraud period in the amount of [REDACTED].

The Department is seeking an FIP overissuance related to benefits issued from [REDACTED]. The Department alleged that the FIIP OI amount is [REDACTED]. The Department presented Respondent's benefit summary inquiry which showed that Respondent was issued FIP benefits during the fraud period in the amount of [REDACTED].

Respondent's LTP did not appear at the hearing. Therefore, the evidence presented which revealed that he had been convicted of two drug-related felonies since August 22, 1996 is unrefuted. Additionally, an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after [REDACTED]. BEM 203, p. 2. This policy applies to both FIP and FAP benefits.

In this case, while Respondent's LTP was a disqualified member, other members of the group, including Respondent, remained eligible for FAP and FAP benefits. The Department presented FAP budgets which showed that when Respondent's LTP was removed from the group, the group would have been eligible for [REDACTED] in FAP benefits during the FAP fraud period. Additionally, the Department presented FIP budgets which showed that when Respondent's LTP was removed from the group, the

group would have been eligible for ██████ in FIP benefits. Accordingly, the Department established that Respondent was not entitled to some of the FAP and FIP benefits received during the fraud period and as such, received an OI of FAP benefits in the amount of ██████ during the FAP fraud period and did received an OI of FIP benefits in the amount of ██████ during the FIP fraud period.

### **DECISION AND ORDER**

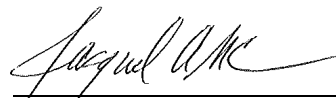
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV relating to FAP and FIP benefits.
2. Respondent did receive an OI of FAP benefits in the amount of ██████
3. Respondent did receive an OI of FIP benefits in the amount of ██████

The Department is ORDERED to initiate recoupment procedures for the total amount of ██████ in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to a 12 month disqualification from FAP and FIP benefits as a result of an IPV.

JM/hw



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**Jacquelyn A. McClinton**

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]  
[REDACTED] [REDACTED]  
[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]