



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: November 4, 2016  
MAHS Docket No.: 16-009528  
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 FAP benefits?

**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 in circumstances including changes in income.
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], (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] Exhibit A, p. 3.
9. This was Respondent's **first** alleged IPV.
10. 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), 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 (May 2014), p. 7; BAM 720 (May 1, 2014), 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report her income to the Department when she began employment in in the third quarter of [REDACTED] with employers [REDACTED] and [REDACTED]. Exhibit A, pp. 46-48. The Respondent originally applied for FAP in [REDACTED] and did not commence employment until the third quarter of [REDACTED] but failed to report the employment or her income. The Department further alleges that Respondent's failure to report income from employment caused an OI of the Respondent's Benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 1, 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

Income reporting requirements are limited to the following:

- Earned income:
  - Starting or stopping employment.
  - Changing employers.
  - Change in rate of pay.
  - Change in work hours of more than five hours per week that is expected to continue for more than one month.
- Unearned income:
  - Starting or stopping a source of unearned income.
  - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 9.

In this case, the Department presented Respondent's application for FAP filed [REDACTED], to establish that the Respondent was aware of her responsibility to report changes as required see Exhibit A, pp. 10 -29. The Department presented Wage Match details which demonstrated that the Respondent was working during the third and fourth quarters of [REDACTED] Exhibit A, pp. 48-49. There was no evidence that the Respondent reported receiving income from employment to the Department during the period [REDACTED]. There was also no evidence that the Respondent misrepresented or otherwise reported to the Department that she was not employed or receiving income on a redetermination or other written document. Based

upon the evidence presented the Department did not establish that the Respondent committed an IPV of her FAP benefits. The Department did not 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).

### **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. 2; BEM 708 (May 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. 15-16. 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. 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 failed to establish an IPV, it is not entitled to a finding that the Respondent is disqualified from receiving FAP program benefits.

### **Overissuance**

When a client group receives more benefits than he or she is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

The Department presented evidence of income received from employment through [REDACTED] information to demonstrate that Respondent did receive income for the third quarter [REDACTED] and the [REDACTED] which caused her to be ineligible to receive food assistance benefits and that she received more benefits than she was entitled to receive. However, because the Department relied solely upon Wage Match information with no specific verification from the employer, it did not demonstrate that it applied the standard of promptness required to allow the Respondent the correct OI begin date.

In addition, based upon Department policy, the Department is unable to use Respondent's average monthly income as a method in determining her budgetable income for each overissuance month. See BAM 720, p. 10. The evidence fails to provide the actual income Respondent received each OI month because it only reports her quarterly earnings, not monthly earnings. See Exhibit A, pp. 48 and 53. The Department failed to provide any other verifications (i.e., payroll stubs), or evidence demonstrating it requested verification from the employer. Thus, based upon the Wage Match information, the Department could not determine the actual income Respondent received for each OI month. For example, the Respondent's quarterly wages for the

third quarter of 2014 were divided by 3 to get the monthly income and were used each month in the budgets. Exhibit A, pp. 45 and 48.

Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit OI resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2015-010 (July 2015), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2015-010, p. 36. Because the Department failed to establish that it properly budgeted Respondent's income in the OI budgets, the Department did not satisfy its burden of showing that Respondent received an OI for FAP and FIP benefits. See BAM 700, p. 1 and BAM 720, pp. 1, 8, and 10. In addition, it must also be noted that because the Department cannot establish an OI in this case, it cannot establish an IPV on this ground as well.

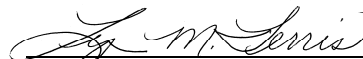
### **DECISION AND ORDER**

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 not** receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the OI and cease any recoupment action.

LMF/jaf



**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]