



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: January 17, 2017  
MAHS Docket No.: 16-010770

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie**

**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 December 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).

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medicaid (MA) 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 for 1 year?

**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 April 29, 2016 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 FAP receiving program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department. Department Exhibit 1, pgs. 64-65 and 69-71.
4. On the Online Assistance Application, DHS 1171, submitted by Respondent on October 17, 2014 and the Online Redetermination Application, DHS 1010, submitted by the Respondent on September 29, 2015, the Respondent reported that she understood the responsibility to report changes in household composition to the Department within 10 days. Department Exhibit 1, pgs. 11-60. She reported on September 29, 2015 that her son was not in the home on DHS 1010, but not within 10 days as is required in policy.
5. Respondent was aware of the responsibility to report changes in household composition where she failed to report that he son [REDACTED] was on active duty with the [REDACTED] starting October 7, 2014 and not in the home. Department Exhibit 1, pgs. 61-63.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2014 through September 30, 2015 for FAP and MA (fraud period).
8. During the fraud period, Respondent was issued [REDACTED] in FAP benefits and [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in FAP benefits and [REDACTED] in FIP benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] and MA benefits in the amount of [REDACTED] for a total recoupment amount of [REDACTED]
10. This was Respondent's first alleged IPV for FAP.
11. 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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

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 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 \$1000 or more, or
  - the total OI amount is less than \$1000, **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, p. 10.

### **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, p. 6; 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.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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, 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.

In this case, the Respondent was a recipient of FAP and MA benefits issued by the Department. Department Exhibit 1, pgs. 64-65 and 69-71. On the Online Assistance Application, DHS 1171, submitted by Respondent on October 17, 2014 and the Online Redetermination Application, DHS 1010, submitted by the Respondent on September 29, 2015, the Respondent reported that she understood the responsibility to report changes in household composition to the Department within 10 days. Department Exhibit 1, pgs. 11-60. She reported on September 29, 2015 that her son was not in the home on DHS 1010, but not within 10 days as is required in policy. Respondent was aware of the responsibility to report changes in household composition where she failed to report that he son [REDACTED] was on active duty with the [REDACTED] starting October 7, 2014 and not in the home. Department Exhibit 1, pgs. 61-63. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2014 through September 30, 2015 for FAP and MA (fraud period). During the fraud period, Respondent was issued [REDACTED] in FAP benefits and [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in FAP benefits and [REDACTED] in FIP benefits during this time period. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] and MA benefits in the amount of [REDACTED] for a total recoupment amount of [REDACTED]. This was Respondent's first alleged IPV for FAP. Notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

The Respondent failed to report that he son [REDACTED] was on active duty with the [REDACTED] starting October 7, 2014 and not in the home. As a result, the Respondent received an over issuance of FAP benefits in the amount of [REDACTED] and MA benefits in the amount of [REDACTED] for a total recoupment amount of [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 established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent did receive an OI of FAP benefits in the amount of [REDACTED] and MA 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 FAP programs for a period of 12 months.



*Carmen G. Fahie*

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**Carmen G. Fahie**  
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

