



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: January 17, 2017  
MAHS Docket No.: 16-013645  
Agency No.: [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 December 20, 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. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

**ISSUE**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) 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 June 19, 2007, Respondent was convicted of a drug related felony.
2. On June 29, 2009, Respondent was convicted of another drug related felony.

3. On April 20, 2015, Respondent submitted and signed an Assistance Application (DHHS-1171). The Department did not submit all of the application into evidence. Specifically, the record does not contain the page of the application upon which the application is required to answer whether they have been convicted of any drug related felonies since August 22, 1996. The Department has failed to meet its evidentiary burden of providing sufficient evidence to establish that Respondent committed an Intentional Program Violation (IPV).
4. In accordance with Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications, Respondent was not eligible for Food Assistance Program (FAP) benefits because he had been convicted of two separate drug related felonies prior to August 22, 1996.
5. In accordance with Bridges Administration Manual (BAM) 720 April 20, 2015 to August 31, 2015 has correctly been determined as an over-issuance period associated with Respondent's April 20, 2015 Assistance Application (DHHS-1171).
6. During the over-issuance period, Respondent received an \$ [REDACTED] Agency Error over-issuance of Food Assistance Program (FAP) benefits.

### **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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) 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.

Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications, at page 4 states:

### **DRUG-RELATED FELONY**

#### **FIP and FAP**

##### **1st Offense**

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

Terms of probation or parole are violated, **and**

The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole:

FIP benefits must be paid in the form of restricted payments.

Receipt of FAP benefits requires an authorized representative.

## **2nd Offense**

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 August 22, 1996.

In this case, the Department presented evidence which shows that Respondent was convicted of two separate drug related felonies prior to August 22, 1996. That evidence establishes that Respondent was not eligible for Food Assistance Program (FAP) benefits on April 20, 2015, when he submitted the application. The Department alleges that Respondent committed an Intentional Program Violation (IPV) by failing to report his felony drug convictions.

The Department submitted parts of Respondent's April 20, 2015 Assistance Application (DHHS-1171). The page of the application upon which the applicant is required to answer whether they have been convicted of any drug related felonies since August 22, 1996, is absent from the record.

The Department's evidentiary burden for this alleged IPV, includes evidence which shows that Respondent fraudulently represented that he had no drug related felony convictions after August 22, 1996. The Department has not met that evidentiary burden and has not established an IPV.

## **OVER-ISSUANCE**

Evidence in this record does show that Respondent received Food Assistance Program (FAP) benefits even though he was not eligible for Food Assistance Program (FAP) benefits. In order to comply with Department policy, the first step in establishing an over-issuance is determining what caused the over-issuance. The Department has not established that the over-issuance was caused by an Intentional Program Violation (IPV) so the criterion for determining an over-issuance period and amount in Bridges Administration Manual (BAM) 720 Intentional Program Violation are not applicable.

Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance (1-1-2013) provides:

## **DEPARTMENT POLICY**

### **All Programs**

Recoupment policies and procedures vary by program and over-issuance type. This item explains client error over-issuance processing and establishment.

BAM 700 explains over-issuance discovery, types and standard of promptness. BAM 705 explains agency error and BAM 720 explains Intentional Program Violations (IPV).

## **Definitions**

### **All Programs**

A provider error over-issuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department.

A client error exists when the client's timely request for a hearing results in the suspension of a Michigan Department of Health and Human Services (MDHHS) action, and any of:

- The hearing decision upholds the MDHHS action.

- The client withdraws the hearing request.

- The client fails to appear for the hearing which is not rescheduled.

- The Michigan Administrative Hearings System (MAHS) sends written notice to proceed with case actions.

The intent of the policy is to create a class of over-issuances caused when the Department is given "incorrect or incomplete information." The evidentiary deficiency of this record that prevents determining an IPV, also prevents determining what information the Department did, or did not, receive. The evidence in this record is insufficient to determine that Respondent's over-issuance was client error. Therefore, the criterion for determining an over-issuance period and amount in Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance are not applicable.

Bridges Administration Manual (BAM) 705 Agency Error Over-Issuances (1-1-2016) provides:

## **DEPARTMENT POLICY**

### **All Programs**

Recoupment policies and procedures vary by program and over-issuance type. This item explains agency error processing and establishment.

BAM 700 explains over-issuance discovery, types and standards of promptness. BAM 715 explains client error, and BAM 720 explains intentional program violations.

## **Definition**

### **All Programs**

An **agency error** is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. Some examples are:

Available information was not used or was used incorrectly.

Policy was misapplied.

Action by local or central office staff was delayed.

Computer errors occurred.

Information was not shared between department divisions such as services staff.

Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

If unable to identify the type of over-issuance, record it as an agency error.

While the evidentiary deficiency in this record prevents a determination of what caused Respondent to receive an over-issuance, BAM 705 contains the catch all clause cited above. Therefore, the criterion for determining an over-issuance period and amount shall be in accordance with BAM 705.

### **Over-issuance Period**

Bridges Administration Manual (BAM) 705 Agency Error Over-Issuances (1-1-2016) provides:

#### **Begin Date**

#### **FIP, SDA, CDC and FAP**

The over-issuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the over-issuance was referred to the RS, whichever 12 month period is later.

In this case, the Department did not submit evidence showing a referral to a Recoupment Specialist. The evidence submitted does show that the records of Respondent's felony drug convictions were printed on August 5, 2015. (Department's Exhibit A pages 11-14) It is also noted that Respondent's Food Assistance Program (FAP) was closed in August 2015. This is sufficient evidence to determine that April 20, 2015 to August 31, 2015 is a correctly determined over-issuance period for this Agency Error Over-Issuance

**Over-issuance Amount**

BAM 705 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 evidence 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 any Food Assistance Program (FAP) benefits during the over-issuance period. Therefore, Respondent received an \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits.

**DECISION AND ORDER**

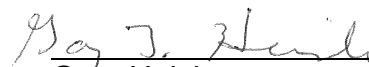
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the Department **HAS NOT** established that Respondent committed an Intentional Program Violation (IPV).

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the Department has established that Respondent received an \$ [REDACTED] Agency Error over-issuance of Food Assistance Program (FAP) benefits which the Department is entitled to recoup.

It is **ORDERED** that the actions of the Department of Health and Human Services, with regard to the alleged Intentional Program Violation (IPV) are **REVERSED**. The Department shall not impose any disqualification on Respondent.

It is **ORDERED** that the actions of the Department of Health and Human Services, with regard to the alleged over-issuance are **UPHELD**. The Department may recoup the Agency Error over-issuance in accordance with Department policy.

GH/nr

  
\_\_\_\_\_  
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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]