



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: February 15, 2017  
MAHS Docket No.: 16-010773  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Eric J. Feldman**

**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 three-way 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 represented herself for the hearing and participated by telephone.

**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 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 in group composition.
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]
9. This was Respondent's second 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 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), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

### 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report that her son, [REDACTED], was no longer a member of the household, which caused an OI of FAP benefits.

Other changes must be reported within 10 days after the client is aware of them. BAM 105 (April 2014), p. 9. These include, but are not limited to, changes in persons in the home. BAM 105, p. 9.

First, the Department presented Respondent's online application dated [REDACTED] to show that she acknowledged her responsibility to report changes as required. Exhibit A, pp. 11-45. In the application, Respondent reported her son as a member of the household. Exhibit A, p. 14.

Second, the Department presented a [REDACTED] dated [REDACTED], which showed that the son was on active duty in the [REDACTED] with start date of [REDACTED]. Exhibit A, pp. 51-52. Thus, the Department argued that the son was not a member the household during the alleged fraud period due to him being an active military member.

Third, the Department presented Respondent's online change reported dated [REDACTED], which was submitted during the alleged fraud period. Exhibit A, pp. 46-48. The Department argued that Respondent failed to report in the change report that her son was no longer a member of the household. Exhibit A, pp. 46-48.

At the hearing, Respondent argued and/or asserted the following: (i) she did not intend to commit an IPV of her FAP benefits; (ii) she never reported to the Department that her son was no longer a member of the household, and it was a mistake; (iii) she did not report her son out of the home because her son was sent to boot camp, and he was going to return home and other reasons, including having different caseworkers, switching DHHS office(s), and personal issues; (iv) she did bring her son to the DHHS office to apply for his own benefits; (v) during the alleged fraud period, her son did come back to the home for a month at a time; and (vi) even though the evidence indicated he was on active duty as of [REDACTED], Respondent stated that her son was still in the household after being sworn-in because there was a waiting period (from [REDACTED] months to a [REDACTED] year) to leave for the military.

In response, the OIG agent testified that Respondent's case comments did not show any notation that Respondent had reported her son had left the household and/or joined the military.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department's position is that Respondent committed an IPV of her FAP benefits by failing to report her son was no longer a member of the household. Exhibit A, pp. 46-48. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that she did not intend to commit a violation of the FAP program. Instead, Respondent's testimony credibly established that she mistakenly failed to report to the Department that her son was no longer in the home, which is a result of client error and her actions do not rise to the level of an intentional act. See BAM 715 (January 2016), p. 1. As such, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her group composition information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 2016), p. 1. Clients are disqualified for ten years for an 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. 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.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

### **Overissuance**

As stated previously, the Department failed to show that Respondent purposely failed to report her group composition information. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error OI 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. BAM 715, p. 1.

In the present case, the Department established by a preponderance of evidence that Respondent's son was no longer a member of the household as of [REDACTED], when he joined the [REDACTED], which continued through the OI period. Exhibit A, pp. 51-52. Respondent did not present any documentation to counter the Department's argument. Therefore, a client error OI is present in this case because Respondent failed to notify the Department that her son was no longer a member of her household. See BAM 105, p. 9.

Applying the OI begin date policy, it is found that the Department properly applied the appropriate OI begin date of [REDACTED]. Exhibit A, pp. 3 and 51; and BAM 715, pp. 4-5.

Additionally, 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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI, the Department presented a "Budget Worksheet" showing that Respondent should have received benefits based on a group size of three rather than four (minus Respondent's son) during the OI period. Exhibit A, p. 56. However, it was discovered during the hearing that Respondent's group size was three at the time (including the son); which meant that Respondent should have received benefits based on a group size of *two* rather than three (minus Respondent's son) during the OI period. This was an error by the Department when calculating the OI of FAP benefits. Nevertheless, when the undersigned Administrative Law Judge (ALJ) reviewed policy to see what the new OI amount should be based on Respondent only being eligible to receive benefits for a group size of two, the result was even a higher OI being calculated. For example, for [REDACTED], the Department indicated that Respondent received \$ [REDACTED] in benefits and that she should have only been eligible for \$ [REDACTED] resulting in a \$ [REDACTED] OI for that month. See Exhibit A, pp. 54 and 56. This was incorrect. Instead, Respondent should have only received \$ [REDACTED] in FAP benefits for a group size of two for [REDACTED] resulting in a \$ [REDACTED] OI of FAP benefits (\$ [REDACTED] benefits received minus \$ [REDACTED] actual eligible amount for two people). See RFT 260 (December 2013), p. 1. This error occurred throughout the FAP benefits. But, the Department cannot seek a higher OI than the amount it sought in this case, which was \$ [REDACTED]. Exhibit A, pp. 1, 3, and 5-6 and BAM 715, pp. 1, 6, and 8. As such, the Department is entitled to recoup the amount it sought in this case, which was \$ [REDACTED] for the period of [REDACTED]. See RFT 260 (December 2013 and October 2014), p. 1.

**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 program 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, less any amount already recouped and/or collected.

EJF/jaf



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**Eric J. Feldman**  
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]