



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 16, 2017  
MAHS Docket No.: 16-013471  
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 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 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 criminal justice disqualifications.
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], and [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 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 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 his FAP benefits because he failed to notify the Department of his prior drug-felony convictions, which occurred after [REDACTED].

Effective [REDACTED], BEM 203, Criminal Justice Disqualifications, added the 2<sup>nd</sup> offense drug-related felony policy, which stated an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified if both offenses occurred after [REDACTED]. BEM 203, p. 2.

Effective [REDACTED], BEM 203 stated 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 (October 2012), p. 2. BEM 203 added the words "in separate periods." See BEM 203, p. 2.

Based on the above policy, there were two issues that arose with the alleged fraud/OI period sought in this case. As stated above, the Department alleged that the fraud/OI period was [REDACTED], and [REDACTED], (fraud period). The first issue is that the Department cannot seek an alleged fraud/OI against Respondent for the period of [REDACTED], because the two or more drug-related felony policy did not even exist at this time. The two or more drug-related felony disqualification did not become effective until [REDACTED].

The second issue is that the Department cannot seek an alleged fraud/OI against Respondent for the period of [REDACTED], ongoing. As stated above, the Department added the words "in separate periods" of the 2<sup>nd</sup> offense drug-related policy effective [REDACTED], and this change affected Respondent's eligibility. Respondent was found to have a drug-related felony conviction on [REDACTED], (offense date of [REDACTED]) and for another drug-related felony conviction on [REDACTED], (offense date of [REDACTED]). Exhibit A, pp. 69-78. With this policy change in effect [REDACTED], Respondent's convictions would only count as one conviction, since they were on the same day. See BEM 203, p. 2. Thus, the Department is unable to seek an alleged fraud/OI period against Respondent after [REDACTED], ongoing, because Respondent only had one conviction at this time based on the policy change. Nevertheless, the Department can seek an alleged

fraud/OI against Respondent for the period of [REDACTED] because Respondent did have two drug-related felony convictions at this time. The “in separate periods” policy requirement was not applicable at this time. Therefore, Respondent was permanently disqualified from FAP benefits for the period of [REDACTED], because he was convicted of a 2<sup>nd</sup> offense drug-related felony after [REDACTED]. See BEM 203, p. 2.

Additionally, the Department presented evidence to show that Respondent committed an IPV of his FAP benefits. The Department presented Respondent’s online applications dated [REDACTED] and [REDACTED], in which Respondent indicated “no” to the question if whether he was convicted of a drug felony, even though the evidence established that he was considered to have been convicted of two drug felonies for the policy effective date of [REDACTED]. See Exhibit A, pp. 15, 41 and 69-78. As such, Respondent committed an IPV of his FAP benefits when he intentionally withheld his criminal justice disqualification information (i.e., marking “no” to the drug-related felony question on the applications). This would have made Respondent permanently disqualified from FAP benefits for the period of [REDACTED], because he was convicted of a 2<sup>nd</sup> offense drug-related felony after [REDACTED]. See BEM 203, p. 2. Therefore, there was clear and convincing evidence that Respondent was aware of his responsibility to report his criminal justice disqualification and that he intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility.

### **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 10 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

### **Overissuance**

When a client group receives more benefits than 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 720, p. 8.

As previously stated, Respondent should have been permanently disqualified from FAP eligibility for the period of [REDACTED] because he was convicted of a 2<sup>nd</sup> offense drug-related felony after [REDACTED]. See BEM 203, p. 2. Thus, Respondent was not eligible for FAP benefits and was over issued FAP benefits for any period he was ineligible to receive FAP benefits.

Accordingly, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued from [REDACTED]. Exhibit A, pp. 113-121, and see RFT 260 (October 2011), p. 1, (FAP group decreasing from two to one—Respondent ineligible due to criminal disqualification, but the other group member was still eligible for FAP benefits).

### 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 committed an IPV.
2. Respondent **did** receive an OI of program FAP benefits in the amount of \$ [REDACTED]

The Department is **ORDERED** to reduce the OI to \$ [REDACTED] for the period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be disqualified from FAP for a period of **12 months**.

EJF/jaf



**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]