



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.: 16-014109  
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). The Respondent was present for the hearing and represented himself.

**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 residence.
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 periods).
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 (August 2016), 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 that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of- state.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2010), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (January 2010 and September 2010), p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

First, the Department presented Respondent's application dated on or about [REDACTED] to show that he acknowledged his responsibility to report changes as required. Exhibit A, pp. 11-27.

Second, the Department presented Respondent's redeterminations dated [REDACTED], and [REDACTED], which were both submitted during the alleged fraud period. Exhibit A, pp. 27-32. In the redeterminations, Respondent indicated no changes in his address, even though his FAP transaction history showed that he was using his Michigan-issued FAP benefits out of state in [REDACTED] at the time. Exhibit A, pp. 28, 32, 34, and 36.

Third, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 33-41. The FAP transaction history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out of state in [REDACTED] (except one transaction in Michigan on [REDACTED], during this period). See Exhibit A, pp. 33-38. Then, the FAP transaction history showed that he used his FAP benefits in Michigan from [REDACTED]. Exhibit A, pp. 38-41.

At the hearing, Respondent argued and/or asserting the following: (i) he did not commit an IPV of his FAP benefits; (ii) during the alleged fraud period, he never changed his residency; (iii) he went to aid and assist his grandmother during the alleged fraud period and traveled back and forth from Michigan to [REDACTED] (iv) a Department representative from Lansing called him at one point to inquiry about his out-of-state usage because the representative thought his card was stolen, and he indicated everything was fine; and thereafter, the representative indicated everything was fine and never informed him that he was not able to use his card out of state; (v) he was a Michigan resident during the alleged fraud period, his residence was in Michigan, and he had a Michigan identification the entire

time; and (vi) if he was a resident of [REDACTED] then he would have reported his address change and/or applied for benefits out of state.

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits.

First, Respondent claimed that he was a Michigan resident during the fraud period and commuted back and forth from Michigan to [REDACTED] because he took care of his grandmother. However, the undersigned Administrative Law Judge (ALJ) does not find Respondent's argument credible that he was a Michigan resident during the fraud period. Except for one transaction in Michigan, Respondent had almost two straight years of out-of-state usage in [REDACTED]. If Respondent claimed to be a Michigan resident during the fraud period, he would have had more than one transaction in Michigan during this two-year-span. See Exhibit A, pp. 33-38. Moreover, Respondent failed to provide any witnesses or evidence showing that he was a resident of Michigan, such as a lease agreement, a state identification, or proof that he was commuting back and forth between states. Finally, the Department presented a redetermination that Respondent signed on [REDACTED], in which he had reported no changes in his Michigan address. Exhibit A, pp. 28-30. However, on the same date Respondent signed his redetermination, he conducted an out-of-state transaction in [REDACTED] Exhibit A, p. 34. This meant that Respondent completed a redetermination for Michigan-issued FAP benefits, in which he reported no change in address, while using his Michigan-issued FAP benefits out of state in [REDACTED] on the same day. Based on this evidence, the undersigned ALJ does not find Respondent's argument credible that he was a Michigan resident during the fraud period. Instead, the undersigned ALJ finds that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his out-of-state residency.

Second, the undersigned ALJ finds that the Department presented sufficient evidence to establish that Respondent intentionally withheld or misrepresented his out-of-state residency. The Department presented evidence that Respondent reported no change in his Michigan residence while he was using Michigan-issued FAP benefits out of state in [REDACTED]. As stated above, the Department presented two of Respondent's redeterminations in which he reported no change in his Michigan address even though the FAP transaction history showed usage out of state at the time. See Exhibit A, pp. 28, 32, 34, and 36. This shows there was clear and convincing evidence that Respondent was aware of his responsibility to report changes in residence and that he intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. The Department has established 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 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

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits.

Applying the OI begin date policy, it is found that the Department applied the appropriate OI begin dates of [REDACTED]. See BAM 720, p. 7, and Exhibit A, pp. 4, 33, and 35.

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 720, p. 8.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan [REDACTED], which totaled \$ [REDACTED]. Exhibit A, pp. 42-45. Therefore, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued to Respondent from [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 committed an IPV.
2. Respondent **did** receive an OI of program FAP 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.

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]