



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: March 1, 2017  
MAHS Docket No.: 16-017195  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on February 9, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] [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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (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. On November 20, 2014, the Department notified Respondent that she was approved for an increase of Food Assistance Program (FAP) benefits as a group of two based on a \$ [REDACTED] gross monthly income. Exhibit A, pp 11-14.

2. The November 20, 2014, Notice of Case Action notified Respondent that she had a responsibility to notify the Department within 10 days of any changes in circumstances that may affect eligibility for assistance. Exhibit A, p 14.
3. On April 29, 2015, the Department received Respondent's completed Redetermination (DHS-1010) form where Respondent reported that a member of her benefit group was employed full time. Exhibit A, pp 15-20.
4. A member of Respondent's household started employment on December 1, 2014, and received earned income from December 1, 2014, through December 25, 2016. Exhibit A, p 22-25.
5. A member of Respondent's benefit group received monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] from December 1, 2014, through April 30, 2015. Exhibit A, p 37.
6. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from February 1, 2015, through May 31, 2015.
7. If Respondent had reported all income received by the benefit group to the Department in a timely manner then she would have been eligible for Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from February 1, 2015, through May 31, 2015. Exhibit A, pp 26-34.
8. On November 4, 2016, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
9. This was Respondent's first alleged IPV.
10. The Department's OIG filed a hearing request on November 4, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

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 \$500 or more, **or**
  - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This responsibility to report changes includes when a member of the benefit group starts new employment and receives an increase of earned income. Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2016), pp 1-20.

Respondent was an ongoing FAP recipient from February 1, 2015, through May 31, 2015. During this period, Respondent received FAP benefits totaling \$ [REDACTED] and these benefits were based on the RSDI benefits Respondent was receiving, but did not

consider the earned income received by a member of Respondent's benefit group. On April 29, 2015, the Department received a completed Redetermination (DHS-1010) form where Respondent did report this earned income to the Department. If Respondent had reported the earned income that was received by the benefit group in a timely manner, she would have received FAP benefits totaling \$ [REDACTED] from February 1, 2015, through May 31, 2015. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits.

### **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 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).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

The Department notified Respondent on November 20, 2014, that she was eligible for increased FAP benefits and that it was her responsibility to report to the Department any changes in circumstances that may affect eligibility for this assistance. The

November 20, 2014, Notice of Case Action put Respondent on notice that she had a responsibility to report changes to her circumstances, but no evidence was entered into the hearing record to establish that Respondent acknowledged this responsibility, or whether she had a physical or mental impairment that would limit her understanding or ability to fulfill this responsibility.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that the Respondent intentionally failed to report that a member of her benefit group started new employment or that the group received an increase of earned income. Although Respondent did receive FAP benefits that she was not eligible for because the Department was not aware of the group's total countable income, the evidence does not establish that Respondent intentionally failed to report her group's income for the purpose of receiving FAP benefits that she would not have been eligible for otherwise.

The Department has not established an Intentional Program Violation (IPV).

### **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 Food Assistance Program (FAP) 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 the Department shall delete the Intentional Program Violation (IPV) disqualification from Respondent's records.

KS/nr

  
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Kevin Scully  
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]