



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: April 3, 2017  
MAHS Docket No.: 16-009175  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED] 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 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 received concurrent program benefits and, as such, 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. On the Assistance Application signed by Respondent on [REDACTED], Respondent reported that he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning on [REDACTED].
8. The OIG indicates that the time period they are considering the fraud period is [REDACTED], through [REDACTED], (fraud period).
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Michigan and the State of [REDACTED].
11. This was Respondent's **first** alleged IPV.
12. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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:

- 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 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 (1/1/16), pp. 12-13.

### **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. 6; 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 Respondent applied for FAP in the State of Michigan on [REDACTED], at which time he indicated he had moved to Michigan on [REDACTED], from [REDACTED]. The Respondent began to use his FAP benefits in Michigan on [REDACTED], and began using his Michigan benefits outside the state of Michigan in [REDACTED] on [REDACTED], through [REDACTED]. (Exhibit A, p. 42.)

The Department also presented evidence in response to an email inquiry to Indiana where Respondent was identified by name, birthdate and Social Security Number, which demonstrated that Respondent received food assistance in the state of [REDACTED] beginning [REDACTED]. (Exhibit A, p. 47.)

BEM 222 provides that a person **cannot** receive FAP in more than one state for any month. BEM 222, (October 1, 2016), p. 3. The Department as part of its evidence also established that at no time after [REDACTED] when the Respondent began to use his Michigan benefits out of state did he report that he had moved, or a change of address, and did not report that he was also receiving FAP benefits from [REDACTED] in [REDACTED]. The Petitioner received dual assistance beginning January 2014 until [REDACTED]. (Exhibit A, p. 46.) In addition, case notes submitted by the Department indicate that on [REDACTED], the Respondent submitted a Semi-Annual Report indicating no changes and was using his EBT card in Indiana at the time. Next, the Respondent advised that his wife should be removed from the FAP group in [REDACTED] without reporting any change or anticipated change. Finally, the Respondent in an interview with the Department on [REDACTED], did not report that he was residing in [REDACTED] or that he was receiving FAP in [REDACTED] and did not report any change of address. (Exhibit A, p. 48.)

Thus, based upon the foregoing facts it is determined that the Department did establish and IPV by clear and convincing evidence that the Respondent committed an IPV of his FAP benefits based on concurrent receipt of benefits.

### **Disqualification**

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. Clients are disqualified for ten years for an FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, and, for all other IPV cases involving FAP, 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. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of food assistance benefits from two states at the same time. In addition, the Department established that at the time he was receiving benefits from both Michigan and the state of [REDACTED] as late as [REDACTED], in a telephone interview with the Department, failed to report change in residence, and that he was receiving benefits from [REDACTED]. Accordingly, Respondent is subject to a 10-year disqualification from receipt of FAP benefits.

### Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. The amount of an FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department seeks an OI of \$ [REDACTED] for the period of [REDACTED] through [REDACTED], the fraud period. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he received food assistance benefits issued by the State of [REDACTED] BEM 222. Further, Respondent was eligible for FAP benefits from the State of Michigan only if he was residing in Michigan. BEM 220 (January 1, 2014), p. 1. The Department presented proof of receipt of Michigan FAP benefits to establish the OI amount. The Department presented the FAP benefit amount added to Respondent's EBT card for [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]; in the amount of \$ [REDACTED] a month for a total OI of \$ [REDACTED] (Exhibit A, p. 49.)

Thus, the Department is entitled to recoup \$ [REDACTED] in FAP benefits issued during the fraud period, [REDACTED], through [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, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of 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.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

LMF/jaf



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**Lynn M. Ferris**  
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

**Petitioner**

[REDACTED]

**DHHS**

[REDACTED]

**Respondent**

[REDACTED]

[REDACTED]