



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 10, 2017  
MAHS Docket No.: 16-016888  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
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 March 13, 2017, 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 her spouse, [REDACTED]

**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 October 28, 2016, 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 income.
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 September 1, 2012 to February 28, 2013 (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 US 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 \$500.00 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 (October 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.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2011), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1.

Respondent's applicable group size in this case is three. RFT 250 indicates that the simplified reporting income limit for a group size of three is [REDACTED] effective October 1, 2011, and [REDACTED] effective October 1, 2012. RFT 250 (October 2011 and October 2012), p. 1.

The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5.

In this case, the Department alleges that Respondent who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she was alleged to have not reported all her employment income, which caused an overissuance of FAP benefits.

First, the Department presented Respondent's application dated on or about February 13, 2012, and her Notice of Case Action dated February 15, 2012, to show that she acknowledged her responsibility to report all changes as required. Exhibit A, pp. 12-37.

Second, the Department presented Respondent's Semi-Annual Contact Report (contact report) received on July 16, 2012, which was submitted prior to the alleged fraud period. Exhibit A, pp. 38-39. In the contact report, the form indicated that the household's monthly gross earned income (before taxes) used in her FAP budget is [REDACTED]. Exhibit

A, p. 39. Moreover, Respondent marked “no” to the question in the contact report that asked if the household’s gross earned income (including earnings from self-employment) changed by more than \$100 from the amount above. Exhibit A, p. 39. However, the Department argued that her income did change by more than \$100. The Department presented Respondent’s employment verification that showed for July 2012, her gross income was [REDACTED], which was well above the [REDACTED] that the Department had been budgeting. See Exhibit A, p. 46. Therefore, the Department argued that Respondent committed an IPV of her FAP benefits because she did not report all her employment income.

Third, the Department presented Respondent’s Redetermination received on January 28, 2013, which was submitted during the alleged fraud period. Exhibit A, pp. 40-43. In the Redetermination, Respondent reported all of her employment income. Exhibit A, p. 41. Respondent reported her biweekly gross pay was [REDACTED] which results in a gross monthly income of [REDACTED] and accurately represents her employment income. Exhibit A, p. 41.

In response, Respondent argued that she did not intentional commit any IPV of her FAP benefits. Respondent testified that anytime her caseworker asked for her paystubs, she was prompt to provide such verification. Respondent testified that she has always been honest for what she has made.

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. In the present case, the Department argued that Respondent committed an IPV of her FAP benefits because she did not report all her employment income in the contact report received on July 16, 2012. Exhibit A, pp. 38-39. As stated above, the Department had been budgeting [REDACTED] as her gross income, but her employment verification showed that her gross income well exceeded that amount. Exhibit A, pp. 38-39 and 46. However, the undersigned Administrative Law Judge (ALJ) does not find that Respondent committed an IPV of her FAP benefits. The evidence presented that Respondent eventually reported all of her employment income when she submitted the Redetermination received on January 28, 2013. Exhibit A, p. 41. The evidence is persuasive that a client error overissuance is present when she voluntarily reported inaccurate information in the contact report (underreported her gross income). BAM 200, p. 5. Nevertheless, this evidence shows that Respondent did not intentionally withhold or misrepresent the income information as she eventually reported it to the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income 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 (October 2016), p. 1. Clients are disqualified for ten years for a 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**

The evidence established that no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance 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 (January 2016), p. 1.

Additionally, the only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200 (December 2013), p. 5. The undersigned ALJ concludes that Respondent voluntarily reported inaccurate information in the contact report received on July 16, 2012 because she underreported her gross income. BAM 200, p. 5. As such, a client error overissuance related to simplified reporting is present in this case.

Applying the overissuance period standards, it is found that the Department applied the appropriate OI begin date of September 1, 2012. Exhibit A, pp. 4 and 46; BAM 200, pp. 5-6; and BAM 715, p. 5.

Also, when a client group receives more benefits than it is entitled to receive, MDHHS 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 this case, the Department presented OI budgets for September 2012 to February 2013. Exhibit A, pp. 52-64. The budgets included the Respondent's income verification. Exhibit A, pp. 45-49. A review of the OI budgets found them to be fair and correct. BAM 715, pp. 5 and 8. Thus, the Department is entitled to recoup [REDACTED] of FAP benefits for the time period of September 1, 2012 to February 28, 2013.

### **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.

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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

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CC: [REDACTED]  
[REDACTED]