



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: May 4, 2017  
MAHS Docket No.: 16-016428  
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 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 [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 (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 [REDACTED] [REDACTED] RFT 250 (October 2012), p. 1.

In this case, the Department alleges that Respondent who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she failed to report the group's income exceeding the reporting limits, which caused an OI of FAP benefits.

First, the Department presented Respondent's online application dated [REDACTED], to show that she acknowledged her responsibility to report changes as required. [Exhibit A, pp. 12-46.]

Second, the Department presented Respondent's Notice of Case Action dated [REDACTED] [REDACTED] which notified her of her simplified reporting responsibilities, including her reporting limit being \$ [REDACTED] for a group size three. [Exhibit A, pp. 47-50.]

Third, the Department presented Respondent's Semi-Annual Contact Report (contact report) dated [REDACTED], which was submitted just prior to the alleged fraud period. [Exhibit A, pp. 51-52.] 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. 52.] 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 \$ [REDACTED] from the amount above. [Exhibit A, p. 52.]

Third, the OIG Investigation Report indicated that Respondent submitted an application on [REDACTED], which was not part of the evidence record, and it was at this time the

Department discovered that she and [REDACTED] had unreported earned income from [REDACTED], [REDACTED], and [REDACTED]. [Exhibit A, p. 4.] It should also be noted that the OIG Investigation Report indicated that the OIG Agent spoke to Respondent on [REDACTED], and [REDACTED], in which she indicated that she did not remember receiving benefits during the time period listed. [Exhibit A, p. 4.] Respondent also attended her scheduled interview with the OIG Agent on [REDACTED]. [Exhibit A, p. 4.]

Fourth, the Department presented the FAP group's employment verification in attempt to show that her household's income exceeded the limits during the alleged fraud period. Specifically, the employment verifications were as follows: (i) [REDACTED] employment had [REDACTED], with the pay dates of [REDACTED] to [REDACTED]; (ii) Respondent's employment at the [REDACTED] with the pay dates of [REDACTED], to [REDACTED]; (iii) Respondent's employment at [REDACTED] [REDACTED] from [REDACTED], to [REDACTED]; and (iv) [REDACTED] employment at unnamed employment, with the pay dates from [REDACTED], to [REDACTED]. [Exhibit A, pp. 53-87.]

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. There was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information showing that the household's income had exceeded the SR reporting limits. The Department presented Respondent's application, notice of case action, contact report, and employment verifications. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld income information during the alleged fraud period for the purpose of maintaining Michigan FAP eligibility. 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

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 (January 2016), p. 6.

As stated previously, 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, p. 1.

A client error is present in this situation because the evidence presented that Respondent failed to report that her group's income exceeded the SR income limit by the 10th day of the following month. See BAM 200, p. 1.

For simplified reporting, policy states that the Department determines the first month of the overissuance as two months after the actual monthly income exceeded the simplified reporting (SR) limit. BAM 715, p. 5. This accounts for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period. BAM 715, p. 5 and see BAM 200, pp. 5-6.

Based on the above policy, the Department would have to demonstrate that the income exceeded the SR limit of \$ [REDACTED] for a group size of three for [REDACTED] and [REDACTED], in order to have the alleged OI period begin December 1, 2012. See RFT 250, p. 1. The evidence record is insufficient to demonstrate that the income exceeded the SR limits for [REDACTED] or [REDACTED]; thus, the Department is unable to have an OI begin date of [REDACTED]. [Exhibit A, pp. 53-87.] Instead, the evidence does show that the income exceeded the SR income limits for [REDACTED] and [REDACTED]; thus, the OI begin date is [REDACTED]. [Exhibit A, pp. 88-91, and BAM 200, pp. 5-6.]

Policy further states if improper reporting or budgeting of income caused the overissuance, use actual income for that income source. BAM 715, p. 8. Bridges converts all income to a monthly amount. BAM 715, p. 8. Exception: For FAP only, do not convert the averaged monthly income reported on a wage match. BAM 715, p. 8. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 8.

In this case, the Department presented OI budgets for [REDACTED] to [REDACTED]. [Exhibit A, pp. 92-99.] A review of the OI budgets found them to be fair and correct. As

such, the Department is entitled to recoup \$ [REDACTED] of FAP benefits for the time period of [REDACTED], to [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 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 reduce the OI to \$ [REDACTED] for the period [REDACTED] to [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

EJF/jaf



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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

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]