



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]  
[REDACTED]

Date Mailed: May 10, 2017  
MAHS Docket No.: 16-016960  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 appeared for the hearing and represented himself.

**ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and Medical Assistance (MA) benefits that the Department is entitled to recoup?

**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 or around [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 FAP benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his circumstances to the Department, such as changes in employment and 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 for the FAP and MA program is [REDACTED], (fraud period).
7. During the FAP fraud period, the Department alleges that 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. During the MA fraud period, the Department alleges that it paid \$ [REDACTED] in MA benefits on Respondent's behalf and that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
11. This was Respondent's first alleged IPV of the FAP.
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), 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k. .

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. 5, 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), pp. 7-8; 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 the FAP because he failed to report that he had gained employment and began earning income, causing an overissuance. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (April 2014), pp.7-12.

The Department contended that Respondent's failure to timely report the employment and earned income resulted in an OI of FAP and MA benefits. The Department provided copies of Respondent's verification of employment showing that he became employed in [REDACTED] that he received his first paycheck on [REDACTED], and that he continued to be employed and earning income through [REDACTED]. (Exhibit A, p. 37).

In support of its contention that Respondent committed an IPV, the Department presented an assistance application completed by Respondent and submitted to the Department on [REDACTED], prior to the alleged fraud period and employment begin date. The Department also presented a Notice of Case Action dated [REDACTED], which advises Respondent that he had been approved for FAP benefits based on reported income of \$ [REDACTED] and again advising of him responsibility to report changes within 10 days. (Exhibit A, pp. 12-35). While this was sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances, it does not establish by clear and convincing evidence that Respondent committed an IPV.

At the hearing, Respondent confirmed that he returned to work in [REDACTED] and stated that he contacted his caseworker by [REDACTED], to advise of his employment. Respondent testified that he lives two hours away from the local Department office and reported his employment via telephone. Respondent's caseworker was not present for the hearing to refute his statements. Furthermore, the Department acknowledged that Respondent disclosed the employment and income when he completed a subsequent application for assistance.

After a thorough review of the evidence presented, the Department has failed to establish that Respondent intentionally withheld information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

### **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. Clients are disqualified for ten years for an FAP IPV involving concurrent receipt of benefits, 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department failed to satisfy its burden of showing that Respondent committed an FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department has alleged that, due to failing to report his income, Respondent received an OI of FAP and MA benefits.

### **FAP 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. At the hearing, the Department presented a FAP Benefit Summary Inquiry to establish that the State of Michigan issued \$ [REDACTED] in FAP benefits to Respondent from [REDACTED]. (Exhibit A, p.38). The Department contended that Respondent's failure to report his employment and income caused an OI of FAP benefits in the amount of \$ [REDACTED] as the Department alleged that Respondent was eligible for \$ [REDACTED] in FAP benefits during this period.

In support of its OI case, the Department presented Respondent's pay register detailing his employment and paydates which reflected a first pay date of [REDACTED], and income continuing through the fraud period. The Department also presented a FAP OI Budget for the month of [REDACTED] to show how the OI was calculated. A review of the budget shows that the given the first pay date, the Department properly determined that the first month of the OI period would be [REDACTED]. Furthermore, upon review, when Respondent's income from employment is included in the calculation of his FAP eligibility, Respondent was eligible to receive \$ [REDACTED] in FAP benefits during the month of [REDACTED].

Thus, the Department is entitled to recoup or collect from Respondent \$ [REDACTED] in FAP benefits which is the difference between the \$ [REDACTED] in FAP benefits actually issued to him and the \$ [REDACTED] in FAP benefits he was eligible to receive.

#### MA OI

The Department also sought to recoup an alleged MA OI in the amount of \$ [REDACTED] for the period of [REDACTED]. The Department asserted that Respondent had excess income and was ineligible for MA benefits. The Department may initiate recoupment of a MA OI only due to client error or IPV, not when due to agency error. BAM 710 (October 2015), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. The Department asserted that the error resulting in over-issued MA benefits in this case was an IPV/client error. Therefore, the Department may seek to recoup the MA OI if one is established.

For an MA OI due to unreported income, the OI amount is the lesser of (i) the correct deductible amount (minus any amount already met) if there would have been deductible or a larger deductible or (ii) the amount of MA payments. BAM 710, pp. 1-2. The minimum OI amount for an OIG referral is \$ [REDACTED] BEM 710, p. 2.

In this case, the Department did not present any documentary evidence such as an Eligibility Summary, MA EDG summary or other similar evidence showing the MA category or type of MA program Respondent was approved for during the alleged MA fraud period. The Department presented a copy of RFT 200 and RFT 240 but did not otherwise establish what the income limit was for the particular MA program that Respondent was approved for.

Although the Department presented verification of Respondent's employment which included pay dates and pay amounts, the Department did not present any budgets showing the calculation of Respondent's income for MA purposes and showing that his income exceeded the income limit for the MA category he received. In the absence of such evidence, the Department has failed to establish the MA OI. Accordingly, the Department is not entitled to recoup/collect the alleged MA OI.

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in over-issued FAP benefits and \$ [REDACTED] in MA benefits for [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 of the FAP.

2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.
3. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the FAP OI amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped/collected.

The Department is ORDERED to delete the \$ [REDACTED] MA OI and cease any MA recoupment/collection action.



ZAB/jaf

---

**Zainab A. Baydoun**  
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] [REDACTED]  
[REDACTED]

**DHHS**

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