



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: June 15, 2017  
MAHS Docket No.: 16-005525  
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 October 5, 2016, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and FIP benefits?
3. Did Respondent receive an overissuance (OI) of FAP, FIP and Child Development and Care (CDC) 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 January 20, 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 FAP and FIP benefits.
3. Respondent was a recipient of FAP, FIP and CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in her 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 periods it is considering the fraud periods for the FAP are July 1, 2010 to December 31, 2010, and July 1, 2012, to August 31, 2012 (FAP fraud period).
7. During the July 1, 2010, to December 31, 2010, FAP fraud period, the Department alleges that Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that during the July 1, 2010, to December 31, 2010, FAP fraud period, Respondent received an OI in FAP benefits in the amount of ██████.
9. During the July 1, 2012, to August 31, 2012, FAP fraud period, the Department alleges that Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
10. The Department alleges that during the July 1, 2012, to August 31, 2012, FAP fraud period, Respondent received an OI in FAP benefits in the amount of ██████.
11. The Department alleges that Respondent received a total FAP OI of ██████
12. The Department's OIG indicates that the time periods it is considering the fraud periods for the FIP are July 1, 2010 to December 31, 2010, and August 1, 2012, to August 31, 2012 (FIP fraud period).
13. During the July 1, 2010, to December 31, 2010, FIP fraud period, the Department alleges that Respondent was issued ██████ in FIP benefits by the State of

Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.

14. The Department alleges that during the July 1, 2010, to December 31, 2010, FIP fraud period, Respondent received an OI in FIP benefits in the amount of [REDACTED]
15. During the August 1, 2012, to August 31, 2012, FIP fraud period, the Department alleges that Respondent was issued [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$10 in such benefits during this time period.
16. The Department alleges that during the August 1, 2012, to August 31, 2012, FIP fraud period, Respondent received an OI in FIP benefits in the amount of [REDACTED]
17. The Department alleges that Respondent received a total FIP OI of [REDACTED]
18. The Department's OIG indicates that the time periods it is considering the fraud periods for the CDC are September 1, 2010 to November 30, 2010, and June 1, 2012, to July 31, 2012 (CDC fraud period).
19. During the September 1, 2010, to November 30, 2010, CDC fraud period, the Department alleges that Respondent was issued [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
20. The Department alleges that during the September 1, 2010, to November 30, 2010, CDC fraud period, Respondent received an OI in CDC benefits in the amount of [REDACTED].
21. During the June 1, 2012, to July 31, 2012, CDC fraud period, the Department alleges that Respondent was issued [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
22. The Department alleges that during the June 1, 2012, to July 31, 2012, CDC fraud period, Respondent received an OI in CDC benefits in the amount of [REDACTED]
23. The Department alleges that Respondent received a total CDC OI of [REDACTED].
24. This was Respondent's first alleged IPV of the FIP and FIP.
25. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 Child Development and Care (CDC) program is established by Titles IV-A, IV-E and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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. 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. 6-7; 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 and FIP because she failed to timely report her employment and income at [REDACTED] because she failed to report her employment and income with the [REDACTED] [REDACTED], causing an overissuance of program benefits. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (January 2010/May 2012), p. 5. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105, pp.7-8.

The Department contended that Respondent's late reporting of her employment and income at [REDACTED] and failure to report her employment and income at the [REDACTED] resulted in an OI of FAP, FIP, and CDC benefits. The Department provided copies of Respondent's verification of employment and the work number showing that Respondent gained employment at [REDACTED] on May 12, 2010, received her first paycheck on May 21, 2010, and continued to be employed and earning income through December 2012. (Exhibit A, pp. 65-69). The Department's evidence established that Respondent gained employment with the [REDACTED] on May 24, 2012, received her first paycheck on June 1, 2012, and continued to be employed throughout the fraud periods. (Exhibit A, pp. 70-77).

In support of its contention that Respondent committed an IPV, the Department presented: a February 2009 CDC application; a January 2010 CDC redetermination; and an April 2010 redetermination which were completed prior to Respondent's employment and prior to the FAP, FIP, and CDC fraud periods. (Exhibit A, pp. 13-29). This was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, as well as the penalties for failing to do so. The Department presented March 2011 and May 2011 redeterminations on which Respondent fails to report her employment and income from [REDACTED], as well as a July 18, 2012, FAP application on which Respondent reported that she gained employment at [REDACTED] on February 20, 2012. The Department contended that Respondent misrepresented her circumstances, as she had gained employment at [REDACTED] May 2010. (Exhibit A, pp. 30-46). Additionally, the Department presented a September 12, 2012, FAP, CDC, and SER application on which Respondent fails to report her income and employment with the [REDACTED], and only reports receiving [REDACTED] monthly (which the Department indicated was her FIP grant). (Exhibit A, pp. 47-64).

Upon review of the evidence presented, the Department established that Respondent was advised of her responsibility to report changes in circumstances and to completely and truthfully answer all questions on the redetermination/applications she completed. Respondent was further advised of the the penalties for failing to do so. The Department's evidence establishes by clear and convincing evidence that Respondent failed to report her employment and income and that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and thus committed an IPV of the FAP and FIP.

### **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 a FAP or FIP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP or FIP, 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 by CDC Policy 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 she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department testified that it was seeking a 12 month disqualification for the FAP and FIP. As referenced above, the Department has satisfied its burden of showing that Respondent committed an IPV. Because this was Respondent's first FAP and FIP IPV, she is subject to a one-year disqualification under the FAP and FIP.

### 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 her income, Respondent received an OI of FAP, FIP, and CDC benefits.

### FAP OI

The amount of a 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 a total of [REDACTED] in FAP benefits to Respondent from July 2010 to December 2010, and from July 2012 to August 2012. (Exhibit A, pp. 136-137). The Department contended that Respondent's failure to report her employment and income caused an OI of FAP benefits in the total amount of [REDACTED] as the Department alleged that Respondent was eligible for [REDACTED] FAP benefits during the FAP fraud periods.

In support of its FAP OI case, the Department presented Respondent's verification of employment showing that she received her first paycheck from [REDACTED] on May 21, 2010, and continued to be employed and earning income through December 2012, and showing that she received her first paycheck from the [REDACTED] on June 1, 2012, and continued to be employed throughout the end of the second FAP fraud period. (Exhibit A, pp. 65-77). A review of the employment information provided and the budgets presented for each month shows that given Respondent's first pay dates for her employment, the Department properly determined that the first month of the first OI period would be July 2010, and the first month of the second OI period would be July 2012, as clients have 10 days to report changes, the Department has 10 days to process the reported changes, and Department policy provides for a 12 day negative action period.

The Department failed to present FAP OI budgets in support of its OI calculation and rather provided FAP Individual Income Results, FAP Gross Income Test, and FAP EDG Net Income Results budgets for each month in the fraud period. The budgets provided included hand written notes with respect to the actual monthly income received by Respondent from [REDACTED] and from the [REDACTED] and with respect to the income considered in the budgets to calculate the OI. The Department did not

explain how it calculated the budgetable income on each of the budgets provided. However, after further review and comparing the actual amounts earned by Respondent as reflected on the paychecks in the verification of employment to the budgets presented in support of the OI calculation, it appears as though in calculating the OI, the Department converted Respondent's actual earnings to a standard monthly amount using the prospective budgeting policy found in BEM 505. (See BEM 505 (July 2016).

With respect to determining budgetable income for calculating an OI of the FAP and FIP, BAM 720 provides that if improper reporting or budgeting of income caused the overissuance, the Department is to use actual income for the overissuance month for that income source and further that Bridges converts all income to a monthly amount. BAM 720, p. 10. BEM 505 also provides that if an OI did occur, the Department is to use actual income instead of projected income when processing a budget for a past month, when that income source is the reason the OI occurred. The Department will convert the income to a standard monthly amount when appropriate. However, Department policy notes an exception for FAP OIs only, and indicates that income is **not** converted to a monthly amount when an OI occurred in the benefit month because the client failed to properly report income. BEM 505, p. 14.

A review of the budgets indicates that because of the Department's improper prospective budgeting, the Department considered income in amounts greater than what was actually earned by Respondent for some months. For example, Respondent's gross monthly income from employment at [REDACTED] for the month of August 2010 was actually [REDACTED], however, on the budget, the Department considered unreported earned income of [REDACTED]. For October 2010, the Department considered unreported earned income on the budget in the amount of [REDACTED], but Respondent's actual earned income was \$[REDACTED]. The Department did not allege that a FAP OI occurred for the months of September 2010 and December 2010. (Exhibit A, pp. 138-185).

For the month of July 2010, the Department asserted that Respondent received [REDACTED] in FAP benefits but was eligible to receive [REDACTED] in FAP benefits, resulting in an OI of [REDACTED] (Exhibit A, pp. 138-143). Although the Department again prospectively budgeted Respondent's income for July 2010, the Department considered income in a lower amount than what was actually received. Thus, the error is in Respondent's favor. Therefore, the Department is entitled to recoup [REDACTED] in overissued FAP benefits for the month of July 2010. The Department is not entitled to any additional recoupment of the FAP OI alleged because it did not establish that the budgets were correct or that the OI was properly calculated.

As such, the Department is only entitled to recoup and/or collect from Respondent [REDACTED] in FAP benefits overissued to her during July 2010.



### FIP OI

The amount of a FIP 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 asserted that the State of Michigan issued a total of ██████ in FIP benefits to Respondent from July 1, 2010 to December 31, 2010, and from August 1, 2012, to August 31, 2012. The Department contended that Respondent's failure to report her employment and income caused an OI of FIP benefits in the total amount of ██████, as the Department alleged that Respondent was eligible for ██████ in FIP benefits during the FIP fraud periods. (Exhibit A, pp. 4-5, 80-108).

In order for a FIP recipient to continue to be eligible for FIP benefits, the individual must establish "financial need." BEM 518 (December 2011), p. 1. Financial need for an ongoing FIP recipient is established when an issuance deficit test shows that the certified group's payment standard exceeds the individual's budgetable income by at least ██████ BEM 518, pp. 1, 3. In determining Respondent's budgetable income at the time she received her employment income, the Department was required to deduct \$200 from her countable earnings and then deduct an additional 50% of her countable earnings. BEM 518, p. 5. Additionally, the Department would be required to exclude any child support income it retained but include any voluntary or direct support paid to the client in determining ongoing FIP eligibility. BEM 518, pp. 5-6.

The Department presented TANF Individual Income Result and FIP Income Test budgets with handwritten notes in support of its FIP OI calculation for each month during the fraud period. The documents were presented to show the amount of FIP benefits Respondent was eligible to receive if her earned income had been properly budgeted in determining her FIP eligibility and allotment (Exhibit A, pp. 80-108).

Again, the Department did not explain how it calculated the budgetable income considered on each of the budgets provided. Similarly to the FAP OI discussed above, after further review, it appears as though the Department converted Respondent's actual earnings to a standard monthly amount using the prospective budgeting policy found in BEM 505. Unlike the FAP OI however, policy allows the Department to convert the income to a standard monthly amount using prospective budgeting for FIP OIs. See BEM 505; BAM 720. Thus, upon review, when Respondent's unreported earned income is included in the calculation of her FIP eligibility, Respondent's FIP group was eligible to receive a total of ██████ in FIP benefits during the FIP fraud periods. Therefore, the Department is entitled to recoup or collect from Respondent ██████, which is the difference between the ██████ issued and the ██████ she was entitled to receive.

### CDC OI

For CDC cases, the amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (July 2014), pp. 1, 6. A client error CDC OI occurs when the client receives more benefits than they were

entitled to because the client gave incorrect or incomplete information to the Department. BAM 715, p.1.

At the hearing, the Department established through its benefit summary inquiry that the State of Michigan issued a total of [REDACTED] in CDC benefits on Respondent's behalf from September 2010 to November 2010, and from June 2012 to July 2012. (Exhibit A, pp. 78-79). The Department alleged that because Respondent's monthly income was in excess of the CDC income limit, Respondent was eligible for [REDACTED] in CDC benefits during the CDC fraud periods. The Department asserted that she received a total CDC OI of [REDACTED] (Exhibit A, pp. 4-5).

While the Department established that Respondent was employed and earning income during the CDC fraud periods, the Department did not present any evidence and could not otherwise explain the OI calculation or what income amounts were considered in determining that she had excess income for each month in the CDC fraud periods. Additionally, the Department did not present any evidence concerning Respondent's CDC group size or the income limits that were considered in the excess income determination. Therefore, although the Department established that Respondent was issued CDC benefits in the total amount of [REDACTED], the Department did not establish that Respondent was eligible for \$0 during the CDC fraud periods. As such, the Department has failed to establish that Respondent was overissued CDC benefits in the amount of [REDACTED]. Therefore, the Department is not entitled to recoupment.

### **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 established by clear and convincing evidence that Respondent committed an IPV of the FAP and FIP.
2. Respondent did receive a FAP OI in the amount of [REDACTED] for only the month of July 2010.
3. Respondent did receive a FIP OI in the amount of [REDACTED]
4. Respondent did not receive a CDC OI in the amount of [REDACTED]

The Department is ORDERED to do the following:

1. Delete the [REDACTED] CDC OI and cease any recoupment/collection action;

2. Reduce the FAP OI amount to [REDACTED] and initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of [REDACTED] less any amounts already recouped and/or collected; and
3. Initiate recoupment and/or collection procedures in accordance with Department policy for a FIP OI in the amount of [REDACTED] less any amounts already recouped and/or collected.

It is FURTHER ORDERED that Respondent be disqualified from the FAP and FIP for a period of 12 months.

ZB/tm

  
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

DHHS

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

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[REDACTED]  
[REDACTED]

CC:

[REDACTED]  
[REDACTED]