



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 9, 2017  
MAHS Docket No.: 16-017707  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

### **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] [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)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP 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 [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 program benefits.
3. Respondent received FAP benefits from the Department as a migrant worker.
4. The Department alleged that Respondent was aware of the responsibility to report changes in residency and income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is from [REDACTED].
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 during the fraud period Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
9. This was Respondent's first alleged FAP 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 October 1, 2014, 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), p. 5.

### **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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her 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.

In this case, the Department alleges that Respondent committed an IPV concerning her FAP benefits. The Department testified that Respondent applied, and was approved, for FAP benefits as a migrant worker but became ineligible for FAP benefits once she moved out of state. Generally, a person must be a Michigan resident to be eligible for FAP benefits issued by the Department. BEM 220 (July 2013 and July 2014), p. 1. A migrant is a person who (i) works or seeks work in agriculture or related seasonal industry and (ii) moves away from her usual home to a temporary residence as a condition of employment or because the distance from her usual home is greater than 50 miles. BEM 610, p. 1. A migrant group must live in the county at the time it files a FAP application, but it may not be required to live in the county or state for any length of time or have any intent of staying for any length of time to receive FAP benefits. BEM 610 (January 2014), p. 4. Migrant status continues as long as the migrant is employed in agriculture or a related seasonal industry or has a commitment of employment or is actively seeking employment. BEM 610, p. 1.

On [REDACTED], Respondent applied for FAP benefits in Michigan (Exhibit A, pp. 12-53). The Department acknowledged that Respondent was approved for benefits as a migrant worker. The Department presented a transaction history showing Respondent's use of her Michigan-issued FAP benefits by date and location (Exhibit A, pp. 66-72). This evidence established that from [REDACTED], Respondent used FAP benefits issued to her by the State of Michigan exclusively in [REDACTED] and [REDACTED]. While this evidence may be sufficient to establish that Respondent did not reside in Michigan, to establish an IPV the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits. See 7 CFR 273.16(e)(6); 7 CFR 273.16(c).

In support of its IPV case against Respondent, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented printouts from the Work Number, a database accessible to the Department where employers voluntarily report employee income information, showing that Respondent and her husband were employed as of [REDACTED] (Exhibit A, pp. 60, 63). However, there was no evidence presented to establish that the work did not continue to be work in agriculture or a related seasonal industry. In the absence of evidence that Respondent was no longer a migrant worker as defined in policy, the Department has failed to establish that Respondent intentionally withheld information for the purpose of obtaining and maintaining FAP eligibility in the State of Michigan.

Under these circumstances, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV concerning her FAP case.

### **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 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification from her receipt of FAP benefits.

### **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 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.

In this case, the Department alleged a \$ [REDACTED] overissuance for the fraud period. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220, p. 1. Migrant/seasonal farmworker groups must report non-income changes within 10 days of the date the change becomes known to the group and must report income-related changes, such as starting/stopping employment, change in hours/rate of pay, etc., within 10 days of receiving the first payment reflecting the change. BEM 610, pp. 10-11. A migrant farmworker's source of income is the grower, not the crew leader. BEM 610, p. 6. Accordingly, a migrant who changes growers has stopped income and started new income, even if the migrant travels with the same crew leader. BEM 610, p. 6. Migrant status continues for 30 days from the date the migrant last worked in an agricultural activity or entered Michigan, whichever is more recent. BEM 610, p. 1.

In this case, the Work Number shows that Respondent's husband had a different employer than that reported in the application and both Respondent and her husband were employed from [REDACTED]. The transaction history, which shows that Respondent's FAP benefits were being used in Iowa during this period, was sufficient to establish that Respondent had a change in employer and income amount from that reported in her Michigan application and that she was no longer residing in Michigan as of [REDACTED]. Because Respondent was no longer a Michigan resident and failed to report this change, she was overissued FAP benefits as a result.

In consideration of out-of-state use that began [REDACTED], the Department properly began the OI period August 2015. BAM 720, p. 7. The benefit summary inquiry presented by the Department showed that from [REDACTED], Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 24). Because Respondent

was not living in Michigan during the fraud period, she was not eligible for any of the FAP benefits issued to her during this period.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits from [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 program benefits in the amount of \$ [REDACTED] from the FAP program.

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



ACE/tlf

---

**Alice C. Elkin**  
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

**Via Email:**

[REDACTED]

**Respondent – Via First-Class Mail:**

[REDACTED]