



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 30, 2017  
MAHS Docket No.: 17-000618  
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 represented herself at the hearing. Also, Respondent's witness, [REDACTED], also provided testimony at the hearing.

### **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 criminal justice disqualifications.
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 second 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department of her prior drug-felony convictions in which both offenses occurred after August 22, 1996.

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203 (July 2014), p. 2.

First, the Department argues that Respondent was convicted of a felony on or about [REDACTED], and [REDACTED], for the use, possession, or distribution of controlled substances two or more times in separate periods and in which both offenses occurred after August 22, 1996. [Exhibit A, pp. 35-37.]

Second, the Department presented Respondent's Redetermination received on [REDACTED], and her application dated [REDACTED], which were submitted during the alleged fraud period. [Exhibit A, pp. 9-34.] In these documents, Respondent marked "no" to the question that asked if she had been convicted of a drug felony, even though the Department argued that she had two drug-related felonies at the time. [Exhibit A, pp. 13, 32, and 35-37.]

At the hearing, Respondent testified that she was not sure of the first drug-related conviction. However, later in her testimony, she testified that she thought her first conviction was a misdemeanor and that is why she marked "no" to the question that asked if she had been convicted of a drug-related felony. As to the second conviction alleged by the Department, she testified that she did plea out to a different charge of uttering and publishing (a misdemeanor she and her witness believed); and the drug charges were dropped. It should be noted that she did testify that she was under the influence of narcotics at the time and did have memory issues. As part of her evidence record, she presented from the Michigan Department of Corrections (MDOC) an Offender Tracking Information System (OTIS) document to show proof that she did plea to uttering and publishing, rather than drug-related felony. [Exhibit 1, pp. 1-3.] The witness also testified that Respondent did not intentionally commit an IPV of her FAP benefits. The witness also supported her contention that she did plea to a misdemeanor for the first drug-related conviction, and that she did plea to uttering and publishing for the second conviction.

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.

First, Respondent argued that the first conviction was a misdemeanor drug-related conviction. Respondent further claimed that she did plea to uttering and publishing for the second conviction, rather than a drug-related felony conviction as alleged by the

Department. To support her argument, Respondent presented an OTIS report showing a history of her convictions. [Exhibit 1, pp. 1-3.] The undersigned Administrative Law Judge (ALJ) disagrees with her argument. A review of the OTIS report does show that she did plea to uttering and publishing, but it also shows that she did plea to a drug-related conviction under case no. [REDACTED] and was sentenced on [REDACTED] [Exhibit 1, p. 2.] This information matches exactly with the Department's evidence it presented when showing proof for the second drug-related conviction. [Exhibit A, p. 36.] Despite the OTIS report showing that she did plea to uttering and publishing, the OTIS report presented by Respondent and court documents presented by the Department, shows that she was convicted of a second drug-related felony on [REDACTED]. [Exhibit 1, pp. 1-2, and Exhibit A, p. 36.] Now, the OTIS report does not show that she was convicted her first drug-related conviction on [REDACTED] as alleged by the Department. However, the Department presented her court documents showing that she did plea to her first drug-related conviction on [REDACTED] [Exhibit A, p. 35.] As such, the evidence presented that Respondent was convicted of a felony on or about [REDACTED] and [REDACTED] for the use, possession, or distribution of controlled substances two or more times in separate periods and in which both offenses occurred after August 22, 1996. [Exhibit A, pp. 35-37, and Exhibit 1, pp. 1-3.]

Second, although the evidence established that Respondent had been convicted of two or more drug felonies, the undersigned finds that she did not intentionally commit a violation of the FAP program. The Department's position is that Respondent intentionally withheld or misrepresented her prior drug-felony convictions from the Department. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that she did not intend to commit a violation of the FAP program. Respondent's credibility was supported by her witness's testimony that she did not intend to commit an IPV of her FAP benefits because she believed her first conviction was a misdemeanor and her second conviction was for a different charge. The witness's testimony bolster Respondent's claim that she did not intend to commit an IPV of FAP benefits. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her criminal justice disqualification 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 an 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

As stated above, there was no IPV committed in this case. However, the undersigned concludes that Respondent had been convicted of two or more drug felonies and that she failed to report these criminal justice disqualification to the Department. Therefore, 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.

A client error is present in this situation because Respondent failed to notify the Department of her two or more drug-related felonies that would have permanently disqualified her from FAP eligibility. See BEM 203, p. 2. Consequently, Respondent was not eligible for FAP benefits and was overissued FAP benefits for any period she was ineligible to receive FAP benefits.

In establishing the OI, the Department presented Respondent's benefit summary inquiry showing that she was issued FAP benefits by the State of Michigan from [REDACTED], which totaled \$ [REDACTED] [Exhibit A, pp. 38-40.] As such, the Department is entitled recoup \$ [REDACTED] in FAP benefits for the period of [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 initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

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]  
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