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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: June 22, 2017  
MAHS Docket No.: 17-001723  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

### **HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on June 13, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent personally appeared and represented herself. Respondent's daughter, [REDACTED] [REDACTED] testified as a witness 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

### **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 requested a hearing on February 1, 2017, to establish that Respondent received an OI of benefits as a result of having allegedly committed an IPV.

2. Respondent applied for and received FAP benefits issued by the Department from January 1, 2010 through October 31, 2015. [Exhibit 1, pp. 28-30].
3. Respondent had a FAP group size of three, which consisted of Petitioner, her son and her daughter. [Exh. 1, pp. 11-16].
4. Respondent's daughter attended [REDACTED] as a full time student from the fall of 2014 through the summer of 2016. During the school year, Respondent's daughter resided in the dorms and had a meal plan. [Exh. 1, pp. 3, 24-27 & Hrg. Test.].
5. On September 25, 2014, the Department received Respondent's completed redetermination form which indicated, among other things, that her daughter was not attending school full-time. [Exh. 1, p. 13].
6. On or about October 16, 2014, Respondent told the Department that her daughter graduated from high school in June and was presently a full-time student at [REDACTED] Respondent also stated that her daughter commutes to and from school on a daily basis. [Exh. 1, p. 17].
7. On or about October 2, 2015, Respondent sent the Department a completed redetermination form that listed her daughter as a group member and indicated that she attended [REDACTED] as a full-time student. [Exh. 1, p. 20].
8. Respondent was aware of the responsibility to report changes as required by applicable Department policy and/or law. [Exh. 1, pp. 11-16].
9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
10. Respondent did not intentionally fail to timely and properly report to the Department the correct amount of household income.
11. The Department's OIG indicates that the time period it is considering the fraud period is from November 1, 2014, to October 31, 2015 (fraud period). [Exh. 1, p. 3].
12. During the alleged 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. [Exh. 1, p. 3].
13. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] [Exh. 1, p. 3].
14. The OIG has requested that Respondent be disqualified from receiving program benefits.
15. This was Respondent's first alleged FAP IPV.

16. 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 Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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-.3011.

#### **Intentional Program Violation**

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
  - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**

- the total OI 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.

See BAM 720, p. 12.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

### Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

In this case, the Department alleges that Respondent committed an IPV when she failed to timely and properly report the proper group composition in order to receive an OI of FAP benefits. The Department contends that Respondent falsely reported that her daughter was a group member, when her daughter was a full-time student at [REDACTED] and was residing in the dorm. Respondent, on the other hand, contends that she did not act intentionally and that she failed to clearly communicate to the Department that her daughter, who was a full-time student, was commuting to and from home.

Department policy requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (10-1-2016), pp. 10-11. Specifically, they must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11. [Emphasis added].

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

As indicated above, the Department must show by clear and convincing evidence that Respondent is guilty of an IPV, which means that she "intentionally failed to report information needed to make a correct benefits determination" or "intentionally gave incomplete or inaccurate information needed to make a correct benefit determination." Although Respondent initially incorrectly reported that her daughter was not a full-time student on the September 25, 2014, redetermination form, the record shows that she later disclosed that her daughter was attending [REDACTED] full-time. The record shows that, at the time, it was not clear whether Respondent's daughter was commuting to and from school or whether she resided in the dormitory. During the hearing, Respondent testified that she did not act intentionally and that she was advised to include her daughter as a household group member. Respondent disputes that she told the Department that her daughter had been commuting to and from campus on a daily basis in order to attend classes. Both Respondent and Respondent's daughter provided credible testimony and the undersigned does not find that there is clear and convincing evidence on this record to show that she acted intentionally. At best, Respondent provided ambiguous information due to confusion rather than due to intentional misrepresentation. Accordingly, this Administrative Law Judge finds that the clear and convincing evidence on the whole record does not show that Respondent committed an IPV.

### **Disqualification**

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is “[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor.” BPG, p. 20. A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

A disqualification period is defined as, “[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist.” BPG, p. 20. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In the instant matter, the Department has not shown that Respondent was guilty of her first IPV concerning FAP benefits. Accordingly, Respondent shall not be personally disqualified from receiving FAP benefits for a period of 1 year.

### **Overissuance**

The Department must also show that Respondent received an overissuance (OI) of FAP benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (10-1-2016) p. 1.

There are three different types of OIs: (1) agency errors, (2) client errors, and (3) CDC Provider errors. See BAM 700, pp. 4-7. An agency error OI is caused by incorrect action (including delayed or no action) by DHHS staff or department processes. BAM 700, p. 4. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p. 5.

In this matter, the Department has shown that Respondent received an OI of FAP benefits. Respondent’s daughter was attending ██████ and there is insufficient evidence that she was commuting to and from class daily. The record further shows that Respondent had paid for a dorm room for her daughter. Respondent was only entitled to receive FAP benefits for a group size of 2 rather than 3. At the hearing, Respondent testified on the record that she did not dispute the Department’s calculations. Based on the above Findings of Fact and Conclusions of Law, the OI resulted because Respondent received \$ ██████ in FAP benefits, but was lawfully entitled to receive \$ ██████ during the period indicated above. [Exh. 1, pp. 28-30, 31-32 and 34]. The

client error occurred when she failed to accurately and definitively report that her daughter resided in the dorm at [REDACTED]. This resulted in confusion, which led to an OI of FAP benefits in the amount of \$ [REDACTED]. According to BAM 700, the Department may recoup this OI.

### **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. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED].

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall be not be disqualified from receiving FAP benefits for a period of 12 months.

IT IS SO ORDERED.

CAP/mc



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**C. Adam Purnell**  
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]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]