



RICK SNYDER  
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 28, 2017  
MAHS Docket No.: 17-003602  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

**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 June 27, 2017, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and testified at the hearing.

**ISSUE**

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

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On January 15, 2015, Respondent submitted an Assistance Application (DHS-1171) for Food Assistance Program (FAP) and Medical Assistance (MA) benefits. Respondent signed the affidavit in the Assistance Application (DHS-1171)

certifying notice of the 10 day reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

2. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to provide true and accurate information or fulfill the reporting requirement.
3. On February 13, 2015, Respondent began receiving earned income from employment. The earned income lasted until August 14, 2015.
4. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report the increased income within 10 days.
5. On August 29, 2015, Respondent began receiving Unemployment Compensation benefits which are unearned income.
6. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report the increased income within 10 days.
7. On November 23, 2015, Respondent submitted a Redetermination (DHS-1010) for his Food Assistance Program (FAP) and Medical Assistance (MA) benefits. In the Redetermination (DHS-1010) Respondent reported his past earned income and his current unearned income.
8. On January 15, 2016, Respondent submitted a change report stating that his Unemployment Compensation benefits had ended.
9. On May 13, 2016, Respondent began receiving earned income from employment. The earned income lasted until October 28, 2016.
10. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report the increased income within 10 days.
11. In accordance with Bridges Administration Manual (BAM) 720 April 1, 2015 to October 31, 2016 has correctly been determined as the over-issuance period associated with this Intentional Program Violation (IPV).
12. During the over-issuance period Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits and a \$ [REDACTED] over-issuance of Medical Assistance (MA) benefits.
13. This is Respondent's 1<sup>st</sup> Intentional Program Violation (IPV).

## 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. .

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances 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 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.

### INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

During this hearing Petitioner testified that he was trying to get back on his feet during this time period. Petitioner also testified that he was under a doctor's care so he needed the health insurance and had back bills to pay. Petitioner testified that he called in and reported he was working and that he also called in and reported when he had medical insurance through his work. Petitioner was specifically asked if he was sent a Verification of Employment (DHS-38) form for his employer to fill out after he reported working. Petitioner replied that he did not remember for sure. Petitioner was specifically asked if he kept calling in to report he was working, when he saw that his Food Assistance Program (FAP) benefit amount did not go down. Petitioner stated he reported what he was supposed to and what the State did with it after that is not his problem. Petitioner's assertion that he did report the start of income is not credible.

In this case, the Department presented an Assistance Application (DHS-1171) and a Redetermination (DHS-1010) that Respondent submitted to the Department prior to the alleged OI period. This documentation is sufficient to establish that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

Respondent began receiving an increased amount of income on February 13, 2015 from employment which Respondent did not report within 10 days. Respondent began receiving unearned income on August 29, 2015 as Unemployment Compensation benefits which Respondent did not report within 10 days. Respondent began receiving an increased amount of income on May 13, 2016 from employment which Respondent did not report within 10 days.

This constitutes clear and convincing evidence that Respondent was aware of the responsibility to report changes and that they intentionally failed to report the income with knowledge that doing so would reduce their benefits. Therefore, the Department has established that Respondent committed an IPV.

## **OVER-ISSUANCE**

### **Over-issuance Period**

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

7 CFR § 273.16 Disqualification for intentional Program violation

(e) Disqualification Hearings (8) Imposition of disqualification penalties (i) states:

If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

In this case, there are three distinct over-issuance periods: April 1, 2015 to August 31, 2015; October 1, 2015 to December 31, 2015; and July 1, 2016 to October 31, 2016. Each of the over-issuances was caused by Respondent's intentional failure to report income within 10 days. The Department has chosen to combine the three into one extended over-issuance period in concert with 7 CFR § 273.16, cited above. The Department submitted evidence showing that Respondent first began receiving income on February 13, 2015. Applying the over-issuance period calculation requirements of BAM 720, the over-issuance period was properly calculated to begin April 1, 2015.

### **Over-issuance Amount**

#### **Food Assistance Program (FAP)**

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive.

The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$[REDACTED] in Food Assistance Program (FAP) benefits during the first over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was only eligible for [REDACTED] of Food Assistance Program (FAP) benefits during the first over-issuance period. Respondent received a [REDACTED] over-

issuance of Food Assistance Program (FAP) benefits during the first over-issuance period.

The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] in Food Assistance Program (FAP) benefits during the second over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was only eligible for \$ [REDACTED] of Food Assistance Program (FAP) benefits during the second over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the second over-issuance period.

The Department presented a benefit summary showing that the State of Michigan issued Respondent a total of \$ [REDACTED] in Food Assistance Program (FAP) benefits during the third over-issuance period. In accordance with the over-issuance budgets submitted by the Department, Respondent was not eligible for any Food Assistance Program (FAP) benefits during the third over-issuance period. Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the first over-issuance period.

Respondent received a \$ [REDACTED] Food Assistance Program (FAP) over-issuance during the over-all, over-issuance period.

#### Medical Assistance (MA)

BAM 710 Recoupment of MA Over-Issuances (10-1-2016) provides that for an over-issuance of Medical Assistance (MA) due to unreported income, the over-issuance amount is the amount of MA payments. The Department presented evidence showing that Respondent was over the income limit for the Healthy Michigan Plan Medical Assistance (MA) benefits he received during the first and third over-issuance periods. The Department also submitted MA payment evidence which shows that MA payments for Respondent during the first and third over-issuance period, totaled \$ [REDACTED]

Respondent received a \$ [REDACTED] Medical Assistance (MA) over-issuance during the over-all, over-issuance period.

#### **DISQUALIFICATION**

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

**DECISION AND ORDER**

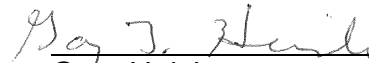
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a \$ [REDACTED] Food Assistance Program (FAP) over-issuance and a \$ [REDACTED] Medical Assistance (MA) over-issuance that the Department is entitled to recoup in accordance with Department policies in BAM 705, BAM 710, BAM 720, and BAM 725.

This is Respondent's 1<sup>st</sup> Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

There is no disqualification from receiving Medical Assistance (MA) benefits associated with an Intentional Program Violation (IPV).

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are UPHeld.

GH/nr



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Gary Heisler  
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]