



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: July 20, 2017  
MAHS Docket No.: [REDACTED] 17-001314  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
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, 42 CFR 431.230(b), 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 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 or around [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 as a simplified reporting (SR) group.
4. Respondent was aware of the responsibility to report changes in his circumstances such as changes in employment and income that exceeded the SR limit.
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 is [REDACTED] (fraud period).
7. During the fraud period, the Department alleges that 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 first alleged 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 \$500.00 or more, or
  - the total amount is less than \$500.00, 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. 7-8; 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 because he failed to report when his income exceeded the income limit for his SR group, resulting in an overissuance of FAP benefits. The Department asserted that Respondent's income exceeded the SR limit in [REDACTED] and as a result, he was overissued FAP benefits from [REDACTED].

Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 1-6. FAP recipients who are simplified reporters are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (December 2013), p. 1. No other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine its total gross income at the end of that month, and if the total gross income exceeds the group's SR income limit, the group must report this change to the Department by the 10th day of the following month. BAM 200, p. 1. The Department sends the client simplified reporting information which explains the reporting requirements based on their circumstances at the time of issuance. The DHS-1605 Notice of Case Action is sent to provide the specific income limit for the group based on the group size. BAM 200, p. 2. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6.

In this case, Respondent was notified in the Notices of Case Action sent to him on [REDACTED], that he was required to report when his gross income exceeded the SR income limit based on his group size. (Exhibit A, pp. 32-42). Effective [REDACTED] the SR limit for Respondent's FAP group of three was [REDACTED] and effective [REDACTED] the SR limit for Respondent's FAP group with three members was [REDACTED]. RFT 250 (October 2014/October 2015), p. 1. Based on the evidence presented, Respondent was properly advised of his reporting obligations.

The Department provided copies of Respondent's verification of employment through a wage match and Work Number detailing the income earned and paydate. (Exhibit A, pp. 45-51). A review of the verification of employment establishes that Respondent's monthly income was in excess of the SR limit referenced above for the months at issue, [REDACTED].

In support of its contention that Respondent committed an IPV, the Department presented a [REDACTED] Semi-Annual Contact Report that was completed by Respondent and submitted to the Department during the fraud period and during the time in which he was employed and earning income. A review of the Semi-Annual indicates that Respondent reported that his household income had not changed by more than [REDACTED] and further reported that he has not had any change in earnings. (Exhibit A, pp. 43-44).

The Department's evidence was sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances on more than one occasion as well as the penalties for failing to do so. After further review, Respondent failed to report

when his income from employment exceeded the SR limit for his group size and as such, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and thus committed an IPV.

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

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. Because this was Respondent's first IPV, he is subject to a one-year disqualification under the FAP.

### **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.

At the hearing, the Department presented a FAP benefit summary inquiry to establish that the State of Michigan issued ██████ in FAP benefits to Respondent for the time period at issue. (Exhibit A, pp. 69-70). The Department contended that Respondent's failure to report when his income exceeded the SR limit caused an OI of FAP benefits in the amount of ██████ as the Department alleged that Respondent was eligible for \$0 in FAP benefits during this period. (Exhibit A, p. 4,52). For failure to report income over the simplified reporting limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, p.p. 405; BAM 720, p. 7. In this case, Respondent's employment income exceeded the simplified reporting income limit in ██████. (Exhibit A, p. 49) Therefore, the Department properly began the OI period for the unreported income in ██████.

In support of its FAP OI case, the Department presented Respondent's verification of employment detailing his pay dates and amounts earned. The Department also presented FAP OI Budgets for each month in the fraud period to show how the ██████ OI was calculated. (Exhibit A, pp. 52-69). A review of the budgets shows that when the unreported income is included in the calculation of his FAP eligibility, Respondent was eligible to receive ██████ during the fraud period for the months at issue. Thus, the Department is entitled to recoup or collect from Respondent ██████ in FAP benefits which is the difference between the ██████ in FAP benefits actually issued and the \$0 in FAP benefits he was eligible to receive.

**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.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amount already recouped/collected.

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



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**Zainab A. Baydoun**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

ZB/tlf

**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]