



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: August 9, 2017  
MAHS Docket No.: [REDACTED]  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 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 Respondent receive an overissuance (OI) of Food Assistance (FAP) and Medical Assistance (MA) 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) of her Food Assistance Benefits?
3. Should Respondent be disqualified from receiving benefits for Food Assistance (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 FAP program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in circumstance that would affect her benefit eligibility, including moving out of state and failing to report change in address or residence.
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 sent the Respondent a Notice of Case Action on [REDACTED] closing her FAP benefits effective [REDACTED]. The Notice indicated that Respondent requested that her benefits be stopped. Exhibit A p. 32-33
7. The Department sent the Respondent a Health Care Coverage Determination Notice on [REDACTED] effective [REDACTED]. Exhibit A, p.39
8. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] to [REDACTED] (FAP) and [REDACTED] to [REDACTED] (MA fraud period).
9. 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 \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]. Exhibit A, p. 27-28
11. During the fraud period, Respondent was issued [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. Exhibit A, p. 44
12. The Department alleges that Respondent received an OI in MA benefits in the amount of [REDACTED].
13. This was Respondent's **first** alleged IPV for FAP.
14. A notice of hearing was mailed to Respondent at the last known address and **was** 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.

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.

Effective January 1, 2016, 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 (1/1/16), p. 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 (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 seeks an intentional program violation due to the Respondent's use of her FAP benefits outside of the state of Michigan for extended periods of time (more than 30 days) and without reporting a change of address.

To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (7/1/14), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (7/1/14), pp. 2-3.

The evidence demonstrated that Respondent applied for FAP benefits on [REDACTED] [REDACTED] in Michigan and was advised that she was required to report changes affecting her benefits within 10 days and to report changes of address. Exhibit A, p. 20. In addition, the Respondent reported that she intended to stay in Michigan. Exhibit A, p. 12. The Department presented no other evidence that Petitioner completed any other written reports advising the Department that she was living in Michigan.

The Respondent participated in an interview with the OIG Agent and advised that she moved to Georgia to be with her family in [REDACTED]. Per a phone conversation with [REDACTED] stated that she had received a letter in the mail regarding her case being closed. [REDACTED] could not remember when she received the letter but believed that it was shortly after she moved to Georgia. A Bridges search was conducted to determine the correspondence that was sent to [REDACTED] during the time she was using her EBT card in the state of Georgia. During that time, [REDACTED] was mailed two separate letters. The first letter was mailed on [REDACTED], stating that [REDACTED] FAP benefits would be closed starting [REDACTED] as [REDACTED] has requested that her assistance be stopped. A second letter was mailed on [REDACTED], stating that [REDACTED] MA benefits would be closed starting [REDACTED] as she requested that her assistance be stopped.

Thereafter, a second conversation was conducted between the Department and Respondent on [REDACTED]. [REDACTED] was informed of the reason for the interview. [REDACTED] reported that she moved to Georgia in [REDACTED]. [REDACTED] stated that she moved there to be with family. [REDACTED] was informed that when she moved to Georgia she was no longer a Michigan resident; therefore, she was not eligible for Michigan assistance. [REDACTED] reported that she received a letter from the MDHHS stating that her case was going to be closed. [REDACTED] could not remember when she received that letter but believes it was shortly after she moved to Georgia. [REDACTED] was informed that she had continued to use her FAP benefits until they closed in [REDACTED] therefore, she was aware of her case still being open. [REDACTED] was informed of the process and what would happen next. [REDACTED] provided this Agent with an updated address. The address is [REDACTED]

Based upon the evidence presented, it is determined that it was insufficient to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information concerning her residency and intentionally did not advise the Department of her change of address for the purpose of establishing and continuing her Michigan FAP eligibility having begun out of state use. The evidence presented shows that the Respondent requested that her benefits be closed, the Department closed the benefits based upon her request and that closure was due to no longer living in Michigan. Thus, the Department has not established an Intentional Program violation was committed by the Respondent of her 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 a 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 Food Assistance**

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 the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented evidence that the Respondent advised the Department to close her FAP benefits and that Respondent advised the OIG that she moved to Georgia in [REDACTED]. Thus, she was no longer eligible for FAP after moving. The Department presented a FAP issuance summary for the period in question and did establish that Respondent received FAP benefits during the overissuance period allegedly being [REDACTED] (FAP). Thus, in the absence of any contrary evidence, this evidence established that Respondent did not reside in Michigan and was not eligible for FAP benefits issued by the Department. The Department provided, as evidence, a new address for Respondent in Georgia based upon information provided by Respondent.

The Department, based upon the evidence presented of out of state use and receipt of Respondent of FAP benefits during the period, has established an overissuance of [REDACTED] that the Department is entitled to recoup.

### **Overissuance Medical Assistance**

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 the OI is the benefit amount the group or provider actually received, minus the amount the group was eligible to receive. BAM 720, p. 8.

The Department also alleges an MA overissuance for the period [REDACTED] to [REDACTED] due to client error in failing to report the move to Georgia. The Department's right to seek an MA OI is only available if the OI is due to client error or IPV when not due to agency error. BAM 710 (October 2015), p.1. A Client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. The Department is required to assume that an MA applicant is not receiving medical benefits from another state unless evidence suggests otherwise. BEM 222 (July 2013), p. 3. Because there was no evidence that the Department should have been aware that Respondent was in another state, Respondent's continued receipt of MA benefits during the period she was out of state and had moved to Georgia caused her to be ineligible for MA benefits. For

an MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of MA payments. BAM 710, p. 2. The Department presented the records of insurance premiums paid for medical cost for Respondent (Capitation Payments). Therefore, the Department is eligible to recoup and collect from the Respondent an MA OI of [REDACTED], which represents the MA cost the Department incurred on behalf of Respondent. Exhibit A, p. 44

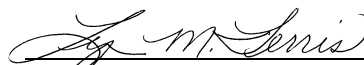
### **DECISION AND ORDER**

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 of her FAP benefits.
2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Food Assistance Program.
3. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Medical Assistance program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] ([REDACTED] FAP) and ([REDACTED] MA) in accordance with Department policy.

LF/hw



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**Lynn M. Ferris**

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]