



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 14, 2017  
MAHS Docket No.: [REDACTED] 17-004140  
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). The Respondent appeared for the hearing and represented herself. Soon after commencement of the hearing, Respondent indicated that she needed an attorney to represent her for the hearing. Respondent then elected to proceed with the hearing in the absence of an attorney.

**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.
4. Respondent was aware of the responsibility to accurately report her circumstances, including her drug related felony convictions.
5. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (fraud period).
6. The Department alleges that 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.
7. The Department alleges that Respondent received an OI of FAP benefits in the amount of [REDACTED]
8. This was Respondent's first alleged IPV.
9. 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), p. 5.12-13; ASM 165 (August 2016).

### **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 she misrepresented her circumstances by failing to disclose to the Department that she had two or more drug related felony convictions. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (November 2012/October 2015), pp.5,7. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2012/October 2015), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated and the qualifying conviction occurred after August 22, 1996 or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution of a controlled substance. 21 USC 862a(a).

The Department presented documentation including Register of Actions from the 3<sup>rd</sup> Circuit Court detailing Respondent's drug related felony convictions and identifying Respondent by first name, middle name, last name and date of birth. (Exhibit A, pp. 11-17). According to the records provided, Respondent had two drug related felony convictions after [REDACTED], specifically in [REDACTED] in Case No. 04-005215-01-FH for controlled substance-delivery/manufacture (narcotic or cocaine) less than 50 gr. (Attempt); and in [REDACTED] in Case No. 06-009664-01-FH for controlled substance-delivery/manufacture (narcotic or cocaine) less than 50 gr. The cited statutory grounds for the convictions in the documents presented by the Department establish that Respondent had two felony drug convictions both of which have possession, use or distribution of a controlled substance as an element.

At the hearing, Respondent asserted that the documents regarding the [REDACTED] conviction have the name spelled as [REDACTED] and her name is spelled [REDACTED]. Respondent confirmed that the identifying date of birth and middle name were correct on the documents. Additionally, a review of other documents in the hearing packet including assistance application and redeterminations have both spellings [REDACTED] and [REDACTED] as being Respondent's first name. Thus, based on the evidence presented, the Department established that Respondent had two drug related felony convictions.

In support of its contention that Respondent committed an IPV by failing to report her felony drug convictions, the Department presented an assistance application dated [REDACTED], a redetermination dated [REDACTED], and a Mid-Certification Contact Notice dated [REDACTED]. On the redetermination and Mid-Certification, Respondent reported that she is disabled and receiving Supplemental Security Income (SSI) and the redetermination indicates that Respondent had an authorized representative, [REDACTED]. A review of the application, redetermination, and Mid-Certification indicates that the questions regarding whether she had been convicted of a drug felony or whether she had been convicted more than once are answered "no". (Exhibit A, pp. 13, 43). At the hearing, Respondent testified that she did not completed the application, redetermination or Mid-Certification forms. Respondent testified that at the time the application was submitted, she was at a treatment facility and a secretary

by the name of [REDACTED] completed the application for her. Respondent testified that [REDACTED] from [REDACTED] completed the redetermination and other forms for her as she was seeking mental health treatment. Respondent testified that her grandmother [REDACTED] was her authorized representative and representative payee for her SSI benefits.

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.” 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Respondent testified that she has mental disabilities, has been diagnosed with bipolar disorder and PTSD and that she takes psychiatric medications. Respondent’s presentation at the hearing created doubt as to her ability to fully understand her responsibilities with respect to her FAP benefits and the hearing itself. Based on this behavior, it is found that Respondent lacked the mental capacity to understand the responsibilities involved with receiving FAP benefits.

Although the Department established that Respondent had two drug related felony convictions, based on the totality of the evidence, the Department has failed to establish that Respondent intentionally committed a program violation of the FAP.

### **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 failed to satisfy its burden of showing that Respondent committed an IPV. As such, Respondent is not subject to disqualification under the FAP for IPV.

### **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.

In this case, the Department alleged that Respondent was overissued FAP benefits in the amount of [REDACTED] because she was a disqualified member of her FAP group and not eligible for FAP benefits issued to her between [REDACTED] based on her felony drug convictions. As discussed above, an individual with two or more felony drug convictions after [REDACTED] is permanently disqualified from receipt of FAP benefits. BEM 203, p. 2. The Department presented sufficient evidence to establish that Respondent had two felony drug convictions after [REDACTED].

Thus, the Department established that, because of her criminal record, Respondent was ineligible for FAP benefits during the fraud period.

A review of the FAP benefit summary inquiry presented by the Department establishes that the State of Michigan issued ██████ in FAP benefits to Respondent during the fraud period. (Exhibit A, pp. 59-66). Because, as discussed above, Respondent was ineligible for FAP benefits, as she was subject to a criminal justice disqualification from the FAP, the Department is entitled to recoup ██████ from Respondent, which is the difference between the amount of FAP benefits actually issued to her and the amount she was eligible to receive during the fraud period.

### **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 program benefits in the amount of ██████ from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of ██████ in accordance with Department policy, less any amount that has already been recouped or collected.

ZB/tlf



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**Zainab A. Baydoun**  
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

**Via Email:**

[REDACTED]

**Respondent – Via First-Class Mail:**

[REDACTED]