



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: August 18, 2017

MAHS Docket No.: 17-006323

Agency No.: [REDACTED]

Petitioner: OIG

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 received concurrent program benefits and, as such, 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. On [REDACTED], Respondent completed an Assistance Application and reported that she and her group members were living in and residents of the State of Michigan. Respondent was advised that she could lose FAP benefits for 10 years if an administrative hearing concluded she lied about her identity or residency to receive benefits on two or more cases at the same time.
5. Respondent was aware of the responsibility to accurately report her circumstances and to report changes in her circumstances such as address and residency.
6. Respondent had no apparent physical or mental impairment that would limit the understanding that she could not receive dual assistance or to limit her understanding of her reporting responsibilities regarding her FAP benefits.
7. The OIG indicates that the time period they are considering the fraud period is [REDACTED], (fraud period).
8. Respondent used Michigan issued FAP benefits outside of the State of Michigan in various states from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], and from [REDACTED].
9. During the alleged fraud period, the Department alleges that Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan, and that she was eligible to receive \$ [REDACTED] in FAP benefits.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
11. The Department alleges that Respondent was issued food assistance benefits from the State of [REDACTED] while receiving FAP benefits issued from the State of Michigan.
12. This was Respondent's first alleged IPV and the Department has requested a 10-year disqualification due to concurrent receipt of benefits.
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the U.S. Postal Service 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:

- FAP trafficking OIs 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. 6-7; 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 because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of [REDACTED]. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, pp. 3-4.

In support of its contention that Respondent committed an IPV, the Department presented the [REDACTED], assistance application completed by Respondent on which she reports that she and her group members are living in and residents of the State of Michigan. The Department asserted that Respondent had been using her Michigan issued FAP benefits in [REDACTED] prior to her application, from [REDACTED], [REDACTED] and that she returned to Michigan to apply for assistance. The Department presented Respondent's IG-311 FAP Transaction history which established that Respondent again began using her Michigan-issued FAP benefits out of state in [REDACTED] from [REDACTED]. (Exhibit A, pp. 10-60).

The Department also presented documents obtained through a collateral contact with authorities in [REDACTED] which identify Respondent by name and date of birth and which indicate that Respondent had an active Food Stamp case in that State from [REDACTED]. (Exhibit A, p. 61). The benefit summary inquiry provided by the Department shows that Respondent's [REDACTED] application was approved and that she received FAP benefits from the State of Michigan in the amount of \$ [REDACTED] for the period of [REDACTED]. (Exhibit A, p. 50).

The evidence presented establishes that Respondent received Michigan-issued FAP benefits and during the same period, received food assistance benefits issued by the State of [REDACTED]. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of food assistance benefits from two states at the same time. In order to apply the 10-year disqualification for concurrent receipt of benefits; however, the Department must establish that the client made fraudulent statements regarding identity or residency. BEM 720, p. 16.

In this case, in her [REDACTED], application for Michigan FAP benefits, Respondent reported that she and her group members were living in Michigan. Respondent was subsequently approved for Michigan issued FAP benefits. Although the FAP transaction history showed that Respondent used her Michigan-issued FAP benefits in [REDACTED] from [REDACTED], there was no evidence presented that Respondent was using her FAP benefits out of state at the time she applied for FAP with the Department. Additionally, there was no evidence presented that Respondent was using the [REDACTED]-issued food assistance benefits as well as the Michigan-issued FAP benefits and the Department did not present any additional assistance applications from the State of Michigan or the State of [REDACTED] during the fraud period.

Thus, under these facts, the Department failed to present evidence that Respondent made a fraudulent statement regarding identity or residency for the purpose of obtaining concurrent benefits. Therefore, Respondent is not subject to a 10-year disqualification. However, she is subject to the standard one-year disqualification from receipt of FAP benefits based on concurrent receipt of benefits.

### **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 received a \$ [REDACTED] overissuance for the period between [REDACTED] and [REDACTED] based on her concurrent receipt of food assistance benefits and based on her lack of Michigan residency. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of [REDACTED] BEM 222, p. 3. Additionally, clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented sufficient documentation to

establish that Respondent did not reside in Michigan through at least [REDACTED] and was not eligible for any FAP benefits issued by the Department during the period at issue. The Department further established that Respondent received food assistance benefits from two states for the months of [REDACTED].

Because Respondent was not eligible for any of the FAP benefits issued during the fraud period, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits between [REDACTED] [REDACTED].

### **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.
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 in accordance with Department policy for the amount of \$ [REDACTED] less any amounts that have already been recouped/collected.

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

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]