RICK SNYDER GOVERNOR

STATE OF MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS MICHIGAN ADMINISTRATIVE HEARING SYSTEM Christopher Seppanen Executive Director

SHELLY EDGERTON



Date Mailed: August 25, 2017 MAHS Docket No.: 17-008297

Agency No.: Petitioner: OIG

Respondent:

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 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 Program (FAP) 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)?
- 3. Should Respondent be disqualified from receiving benefits FAP benefits?

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 _____, 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. The Department alleged that Respondent was aware of the responsibility to report any change in circumstance.
- 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 (fraud period) is from ______.
- 7. Respondent lived and worked out of state during the fraud period. Respondent did not inform the Department of her change in residence.
- 8. The Department alleges that during the fraud period Respondent was issued \$\text{in FAP benefits by the State of Michigan, but she was entitled to \$\text{such benefits during this time period.}
- 9. The Department alleges that during the fraud period Respondent received an OI in FAP benefits in the amount of \$____
- 10. This was Respondent's first alleged FAP IPV.
- 11. A notice of hearing was mailed to Respondent at the last known address and **was** 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.

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 (1/1/16), pp. 12-13.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

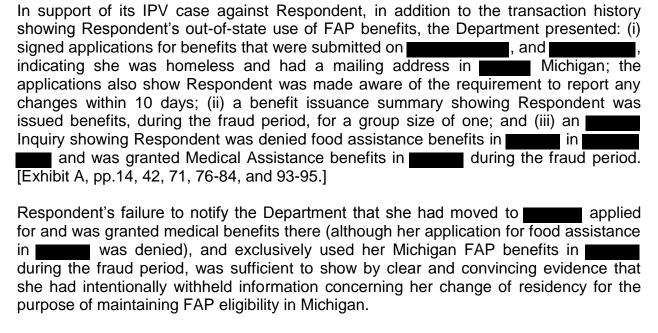
- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 1, 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. 8 (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 concerning her FAP benefits because she intentionally misrepresented her residency in order to receive benefits from the State of Michigan. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she 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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 2014), p. 3.



Under these circumstances, the Department has established that Respondent committed an IPV concerning her FAP case.

Disqualification

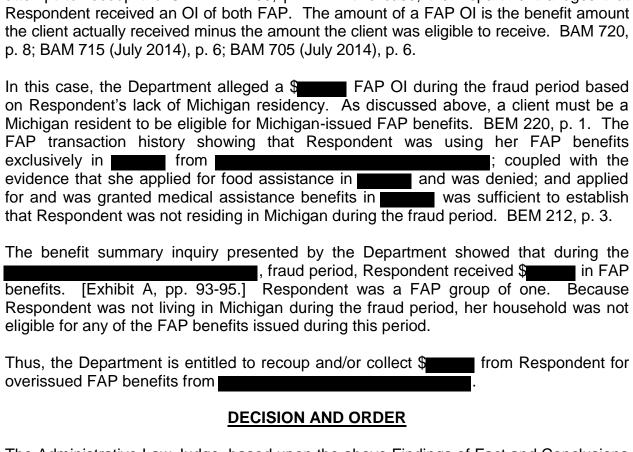
A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification 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/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. Thus, Respondent is subject to a period of disqualification from receipt of FAP benefits on the basis of 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. In this case, the Department alleges that



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 concerning FAP.

2.	Respondent did receive an OI of FAP program	n benefits in the amount of \$	for
	the period		

The Department is ORDERED to do the following in accordance with Department policy:

• Initiate recoupment and/or collection procedures for the FAP OI amount of \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and/or collected, for the period \$\text{less any amounts that have already been recouped and or collected and or co

It is FURTHER ORDERED that Respondent be disqualified from receipt of FAP benefits for a period of **12 months** due to IPV.

DM/jaf

Denise McNulty

Administrative Law Judge for Nick Lyon, Director

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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**

Petitioner

Respondent

