



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: September 14, 2017  
MAHS Docket No.: 17-004922  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 September 11, 2017, 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 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 FAP benefits for 12 months?

**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 program benefits.
3. Respondent was a recipient of Food Assistance Program (FAP) benefits issued by the Department.
4. Respondent was aware of the responsibility to report income changes to the Department within 10 days.
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's OIG indicates that the time period it is considering the fraud period is [REDACTED] (fraud period).
7. 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 \$ [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 United States 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 (January 2016), p. 5.

### **Overissuance**

In this case, the Department requested a hearing, in part, to establish Respondent received an overissuance of benefits. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (February 2013 and July 2013) p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (March 2013), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. FAP groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2011), p. 1. Simplified reporting groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size. BAM 200, p. 1. The Department considered Respondent to be a simplified reporter.

Petitioner submitted an application for FAP benefits on [REDACTED] (Exhibit A pp. 13-57). Petitioner indicated in her application that the sole income of the household was her husband's income from employment, where he worked 40 hours per week at \$[REDACTED] per hour. The Department sent a Notice of Case Action to Petitioner on

██████████ (Exhibit A, pp. 59-70). Respondent was notified in the Notice of Case Action that the simplified reporter income limit for a group size of four was \$██████████ and that if the monthly household income exceeds that limit, they must report the change to the Department. The Department also provided a Semi-Annual Contact Report dated ██████████ where Respondent was notified that her monthly gross earned income used to calculate her FAP benefits was \$██████████ (Exhibit A, pp. 71-72). Respondent was informed that if her gross earned income changed by more than \$██████████ she needed to report the change to the Department. Respondent indicated in the Semi-Annual Contact Report that her household income had not changed.

On ██████████, Respondent submitted a completed Redetermination form to the Department, indicating her husband was making \$██████████ per hour, working 40 hours per week. The Department reviewed the Redetermination and the verifications of employment submitted by Respondent. The Department discovered Respondent's husband's earnings were higher than what Respondent previously reported, because he frequently worked more than the reported 40 hours weekly. The Department presented a verification of gross wages from Petitioner's husband's employer for the period of ██████████ ██████████ ██████████ ██████████ ██████████ (Exhibit A pp. 85-90). The Department contended that Respondent's household income exceeded the simplified reporting limits; and she should have noted the change in the ██████████ Semi-Annual Contact Report.

The Department presented an Issuance Summary (Exhibit A, p. 58) and corresponding FAP overissuance budgets (Exhibit A, pp. 92-101) covering ██████████ ██████████. The Department calculated Petitioner's household income using the employment income information submitted by the employer. The presented budgets factored all of Respondent's household earned income as unreported. However, the Department did not allege that Respondent failed to report employment income. The Department only alleged that Respondent failed to report employment income that exceeded the simplified reporting limits. Factoring the entirety of the employment income as unreported deprives Respondent from the receipt of a 20% earned income deduction for the portion of the earned income that was properly reported and previously budgeted. The Department should have only disallowed the 20% earned income deduction on the unreported earnings. BAM 720, p. 10. Therefore, the Department failed to follow policy when calculating the overissuance. Thus, the Department failed to establish there was an overissuance.

### **Intentional Program Violation**

Suspected IPV means an overissuance 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 p. 7; BAM 720, p. 1.

The Department alleged Respondent purposely failed to report an increase in income, resulting in her receipt of FAP benefits for which she was not entitled. It is possible that Respondent purposely failed to report an increase in income. However, both BAM 720 and BAM 700 state that an IPV means an overissuance exists when certain conditions are met, see above. Based on that language, a finding of an IPV is conditioned on the existence of an overissuance. As the Department failed to establish that Respondent received an overissuance of FAP benefits, it must follow that the Department failed to establish Respondent committed an IPV. Accordingly, the Department may not proceed with imposing an IPV disqualification against Respondent.

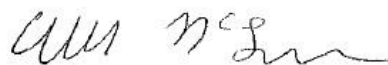
### **DECISION AND ORDER**

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 not** receive an OI of FAP program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

It is FURTHER ORDERED that Respondent is not subject to disqualification from FAP benefits.



EM/jaf

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**Ellen McLemore**  
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]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
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