



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.: 17-004916  
Agency No.: [REDACTED]  
Petitioner: OIG  
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, 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 August 2, 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 (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 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 March 22, 2017, 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 report changes and accurately report criminal justice disqualifications.
5. The Respondent's friend (at an interview she attended with the Respondent) told the OIG Agent that Respondent had a stroke in 2011 and he could only recall one drug felony conviction.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement based upon the evidence that he recalled one drug-related felony even after his stroke but still answered "no" to the questions regarding "convicted of a drug felony?". The same answers were given on applications in 2007 and 2008 even before the Respondent had a stroke. Exhibit A, pp. 13, 21, 45 and 55.
7. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2011 through April 30, 2016 (fraud period).
8. 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. This was Respondent's **first** alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services 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 1, 2016), p. 12-13; ASM 165 (August 2016), p. 1-2.

### **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 alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department of his prior drug-felony convictions in which both offenses occurred after August 22, 1996.

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203 (October 2012), p. 2.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. There was clear and convincing evidence that Respondent was aware of his responsibility to report his criminal justice disqualification and that he intentionally withheld this information for the purpose of maintaining Michigan FAP eligibility.

The evidence presented demonstrated that Respondent was convicted of a drug related felony on or about [REDACTED] for the use, possession, or distribution of controlled substances two or more times in separate periods and in which both offenses occurred after August 22, 1996. Exhibit A, pp. 10 and pp. 11. The convictions were in the Calhoun County Circuit Court.

In this case, the Department seeks to disqualify the Respondent due to an alleged IPV the Department alleges was committed by the Respondent due to failing to notify the Department of drug-related felony convictions when completing applications for

Benefits. The Department presented 4 applications as evidence. The first two applications completed by Respondent on his own filed on July 23, 2007 and February 21, 2008 each answer “no” to the question ever been convicted of a drug-related felony. Exhibit A, p. 13 and p. 21 respectively. The Respondent’s friend and Respondent appeared for an interview at the Calhoun County offices on January 30, 2017. At that time, the Respondent’s friend advised the Department that Respondent had had a stroke in 2011 and could not recall more than one drug felony conviction. The friend, ██████████, stated she usually filled out Respondent’s applications. The Respondent has aphasia (difficulty speaking). Even though ██████████ conceded that the Respondent recalled that had been convicted of one drug felony, an application filed on June 20, 2012 and a redetermination filed April 25, 2013 both answer “No” to the question convicted of a drug felony and “no” to the question convicted more than once. Exhibit A, p. 45 and p. 55 respectively.

Based upon the evidence presented the Respondent would have been ineligible and disqualified from receiving FAP benefits on an after October 1, 2011 when the law changed making an individual with two or more convictions of a drug felony ineligible. Based upon the evidence provided it is determined that the Respondent failed to report even one drug felony that he recalled and due to his answers of “No” to the question convicted of a drug felony and convicted more than once he continued to receive FAP benefits he was no longer entitled to receive because he failed to report his convictions. In it determined based upon the evidence that the Department has established an IPV by clear and convincing evidence.

### **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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program for 12 months. BAM 720, p. 16.

### **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 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.

As previously stated, Respondent should have been permanently disqualified from FAP eligibility when the Department policy was changed on October 1, 2011 to require disqualification from receipt of benefits after conviction of two drug related felonies. The Respondent continued to receive benefits after that date, and when he reapplied in 2012 and filed a redetermination in 2013 he continued to receive FAP benefits due to his incorrect answers to the drug felony questions. Because the evidence presented demonstrated that he was convicted of 2 or more drug-related felony convictions in separate periods and in which both offenses occurred after August 22, 1996 he was ineligible. See BEM 203, p. 2. Thus, Respondent was not eligible for FAP benefits and was overissued FAP benefits for any period he was ineligible to receive FAP benefits. Based upon the issuance summaries presented the Department established that Respondent received FAP benefits throughout the fraud period, as such, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued from October 1, 2011 through April 30, 2016. Exhibit A, pp. 56-60.

### **DECISION AND ORDER**

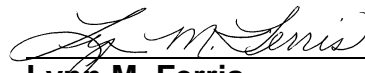
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of **12 months**.

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]