



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: December 11, 2017  
MAHS Docket No.: 17-006494  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**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 August 14, 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 benefits for 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 April 19, 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 in circumstances including members of his household.
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 January 1, 2014, to August 30, 2014, (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), 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 (January 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). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct, weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to notify the Department that his son had moved out of his home thereby reducing the size of the household.

FAP group composition is established by determining who lives together, the relationship of the people who live together and whether they purchase and prepare food together or separately. BEM 212 (January 2017), p.1. Parents and their children **under** 22 years of age who live together **must** be in the same group. BEM 212, p. 2. Living with means sharing a home where family members usually sleep and share any common living quarters, such as a kitchen, bathroom, bedroom or living room. BEM 212, p. 2. A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if (i) the person's location is known; (ii) the person lived with the group before an absence; (iii) there is a definite plan for return; and (iv) the absence has lasted or is expected to last 30 days or less. BEM 212, p. 3.

A FAP group's benefit amount is based upon the number of individuals in the group. BEM 556 (July 2013), p. 5. Respondent received benefits for a group size of two during the fraud period. He received benefits for himself and his son.

In support of its contention that Respondent committed an IPV of his FAP benefits, the Department presented (i) the application and redetermination Respondent submitted to the Department in September 2013 and July 2014 showing that Respondent was aware he was required to report the name of all the persons in his home [Exhibit A, pp. 17-19, 28, 48]; (ii) a Public Assistance Reporting Info System (PARIS) report showing Respondent's son was receiving food benefits in Ohio under another case with a beginning date of January 27, 2014, [Exhibit A, pp. 12-13]; (iii) benefit summary inquiry showing Respondent received benefits for a group size of two during the fraud period [Exhibit A, pp. 56-59]; and (iv) an issuance summary demonstrating Respondent received an overissuance of benefits due to the unreported change in group composition. [Exhibit A, p. 60.] While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

The Department provided further evidence demonstrating Respondent was advised of his responsibility to report any changes regarding individuals moving in/out of the home within 10 days. [Exhibit A, p. 28.] The Department contends Respondent failed to notify the Department of the changes within 10 days. Respondent submitted a handwritten note to the Department on August 6, 2014, inaccurately stating that his son moved out in May 2014. [Exhibit A, p. 53.] The August 2014 note was the first time the Department was notified of the change in Respondent's group size. At the time, Respondent provided the Department notice of the change in his group size, his son had been out of his home for about seven months; and Respondent was intentionally indicating the wrong date of the change.

Since Respondent failed to report the changes in his household, he received benefits in excess of the amount he was eligible to receive during the fraud period because the correct group size was not considered in the budgets when determining his benefit amount. There was sufficient evidence to establish Respondent intentionally withheld information that, if properly disclosed, would have resulted in reduced FAP benefits. Under the circumstances it is found that the Department established by clear and convincing evidence that Respondent committed an IPV in connection with his FAP case.

### **Disqualification**

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 13.

In this case, as discussed above, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a disqualification period for receipt of FAP 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 (1/1/16), p. 6; BAM 705 (1/1/16), p. 6.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. [Exhibit A, p. 60.] The Department presented a benefit summary inquiry showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. [Exhibit A, pp. 56-59.] Because of his failure to report the

change in his household size, as described above, consideration of the reduced group size resulted in a determination that the FAP group was eligible for a lesser amount of benefits during the fraud period. BEM 212 (October 2011 and October 2015), pp. 6-9. Respondent received benefits for a group size of two, during the fraud period, when he was actually a group of one. Because of the change in group size, Respondent's FAP group was only eligible for \$ [REDACTED] in FAP benefits received during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits 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** 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) FAP.

The Department is ORDERED to initiate recoupment/collection procedures in accordance with Department policy for a FAP OI in the amount of \$ [REDACTED] less any amounts already recouped/collected.

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



DM/jaf

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**Denise McNulty**  
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

**Petitioner**

[REDACTED]

**DHHS**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]