



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: December 27, 2017  
MAHS Docket No.: 17-006980  
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 August 7, 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 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 April 25, 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 FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to accurately report her circumstances and to report changes in his circumstances to the Department, such as changes in employment and income.
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 February 1, 2015, to December 31, 2015, (fraud period).
7. During the fraud period, the Department alleges that 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 US Post Office 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 2016), pp. 5, 12-13; ASM 165 (August 2016).

**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. 7-8; 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 the FAP because she failed to report to the Department that she was self-employed and earning income from her self-employment, causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (October 2014), pp. 7-11.

The Department contended that Respondent's failure to report her self-employment income caused an OI of FAP benefits in the amount of \$██████ from February 2015 to December 2015. The Department provided verification of Respondent's self-employment and earnings as reflected on an IRS Form 1040 Individual Tax Return and Schedule C-EZ (Net Profit From Business) for the year 2015. (Exhibit A, pp. 98-113).

In support of its contention that Respondent committed an IPV, the Department presented a redetermination completed by Respondent and received by the Department on October 1, 2014, prior to the alleged fraud period and employment begin date. The Department also presented a Notice of Case Action dated November 25, 2014, which advised Respondent that she was approved for FAP benefits based on \$█ in reported earned income and self-employment income. This established that Respondent was advised of her responsibility to report changes in circumstances, as well as the penalties for failing to do so. (Exhibit A, pp. 12-23).

The Department provided Respondent's November 12, 2015, assistance application which was submitted to the Department during the fraud period and during the period in which she was self-employed and earning income. A review of the application shows that Respondent failed to disclose her self-employment income and only reported receiving money from family/friends. (Exhibit A, pp. 24-56).

Although Respondent reported her self-employment income for the first time on an application for State Emergency Relief (SER) assistance submitted on May 10, 2016, the Department's evidence was sufficient to establish that Respondent was advised of her responsibility to completely and truthfully answer all questions on the applications and redeterminations she completed and further that she was advised of her responsibility to report changes in circumstances, as well as the penalties for failing to do so. Thus, because Respondent failed to timely report her self-employment income and further failed to disclose her earnings on the November 12, 2015, assistance

application, the Department's evidence establishes, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and thus committed an IPV of the FAP.

### **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 10 years for a FAP or FIP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP or FIP, 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 by CDC Policy 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 she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As referenced above, the Department has satisfied its burden of showing that Respondent committed an IPV of the FAP. Because this was Respondent's first FAP IPV, she is subject to a one-year disqualification under the FAP.

### **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.

At the hearing, the Department presented a FAP benefit summary inquiry to establish that the State of Michigan issued \$ [REDACTED] in FAP benefits to Respondent from February 2015 to December 2015 (Exhibit A, pp. 131-132). The Department contended that Respondent's failure to report her self-employment income caused an OI of FAP benefits in the amount of \$ [REDACTED] as the Department alleged that Respondent's group was eligible for \$ [REDACTED] in FAP benefits during this period. (Exhibit A, p. 133).

In support of its OI case, the Department presented verification of Respondent's self-employment income from her 2015 tax return. The Department also presented FAP OI budgets for each month in the fraud period to show how the OI was calculated (Exhibit A, pp. 133-153). A review of the budgets for each month shows that when Respondent's self-employment income and expenses are considered in the calculation of the group's FAP eligibility, Respondent's group was eligible to receive \$ [REDACTED] in FAP benefits during the fraud period.

Thus, the Department is entitled to recoup or collect from Respondent \$ [REDACTED] in FAP benefits, which is the difference between the \$ [REDACTED] in FAP benefits actually issued to her and the \$ [REDACTED] in FAP benefits she was eligible to receive.

**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 of the FAP.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED]

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

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



ZB/jaf

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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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

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