



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: December 11, 2017  
MAHS Docket No.: 17-009157  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 December 4, 2017 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

**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 the 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 June 7, 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 truthfully and accurately answer all questions on applications for benefits.
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 August 14, 2013 through November 30, 2015 (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 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 2016), p. 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 (October 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 misrepresented her husband's two felony drug convictions at the time of her applications.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2013, January 2015), pp. 6, 8. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013, January 2015), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated and the qualifying conviction occurred after August 22, 1996 or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and (11). The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

In support of its case, the Department presented evidence of two felony drug convictions for the Respondent's husband, [REDACTED]. The first conviction was on March 9, 2000 in which he pled guilty to controlled substances—possession of a narcotic or cocaine less than 25 grams in the [REDACTED]. The second conviction from the [REDACTED] was on October 13, 2005 for possession of a controlled substance schedule 1 or 2 narcotic in any mixture less than 25 grams.

The Department also presented applications for benefits dated August 14, 2013 and March 2, 2015 in which the Respondent answered no as to whether [REDACTED] had been convicted of a drug felony.

The Respondent denies knowledge of these felony convictions. She met her husband in 1999, but their relationship has been on and off throughout the years. The Respondent married her husband in 2012. She did not attend any of the court hearings related to either conviction and her husband has repeatedly told her, even in preparation for the hearing in this case, that his convictions were misdemeanor offenses. In addition, any time served by her husband has been in local county jails and not prison. The Respondent did not realize that the convictions were felonies until a couple of weeks ago when she saw a letter addressed to her husband rejecting him from employment at the Post Office due to his felony convictions.

The Respondent has credibly denied knowledge until very recently that her husband had felony convictions; therefore, she did not intentionally misrepresent the information about his convictions to the Department. After a review of all of the evidence, the Department has not met its burden of proof in establishing an IPV by the Respondent.

### **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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of proof in showing that the Respondent committed an IPV. Therefore, Respondent is **not** subject to a one-year disqualification from 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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged that Respondent was issued FAP benefits in the amount of \$ [REDACTED] between August 14, 2013 and November 30, 2015 and that due to her husband's drug related felony convictions, she was overissued \$ [REDACTED] in FAP benefits during this period. A review of the FAP Benefit Summary Inquiry presented by the Department supports benefits issued in the amount alleged. (Exhibit A, pp. 65-69). While the Department did not carry its burden to show an IPV, it has shown that the Respondent's husband was convicted of two felony drug convictions after August 22, 1996 and ineligible for benefits.

Since Respondent is the only remaining member of the household after her husband was removed, the overall benefit amount is reduced based upon the reduced group size. The Department provided budgets for each month of the OI period. (Exhibit A, pp. 71-126). A review of each of the OI budgets shows that the Department properly calculated the amount that the Respondent was eligible to receive once Mr. Jackson was removed from the FAP group for each budget except August 2013, February 2014, August 2014, and March 2015. In each of these four months, the Department properly listed the Monthly Benefit under item H.4. but then utilized an unexplained number under item I.1. for the Correct Benefit Amount. The Monthly Benefit under H.4. on the OI budgets should be the same as the Correct Benefit Amount under I.1. The Department provided no explanation why these four months did not follow this rule while all the other months of the OI period followed the rule. Without some explanation, the Department has not met its burden of proof by a preponderance of the evidence that the Respondent received an OI and may not recoup or collect FAP benefits from Respondent for any of these months.

Since the Department cannot establish a FAP OI for August 2013, February 2014, August 2014, and March 2015, the Department's total OI calculation is inaccurate and is reduced to \$ [REDACTED]. Therefore, the Department is entitled to recoup \$ [REDACTED] from Respondent, which is the difference between the amount of FAP benefits actually issued to Respondent's household and the amount the household was eligible to receive during the OI period once the FAP OI for August 2013, February 2014, August 2014, and March 2015 is removed.

### **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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period from September 2013 through January 2014, March 2014 through July 2014, September 2014 through February 2015, and April 2015 through November 2015, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be is **not** subject to a period of disqualification from the FAP.

AM/kl



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**Amanda M. T. Marler**  
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

**Via email**

A large black rectangular redaction box covering the email address.

**Respondent via USPS**

A large black rectangular redaction box covering the USPS address.