



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: December 6, 2017  
MAHS Docket No.: 17-009247  
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 November 22, 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 Family Independence Program (FIP) 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 FIP?

**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 8, 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 FIP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report all household 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 June 2012 through December 2012 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP 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 FIP 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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. 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 (October 2016), p. 7; 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.

The Department alleges that Respondent committed an IPV concerning his FIP benefits because he intentionally withheld information concerning his son's RSDI income in order to receive or maintain FIP benefits from the State of Michigan. The Department uses the gross benefit amount of RSDI unearned income in calculating a household's budget. BEM 503 (October 2011), p. 21.

Respondent applied for FIP benefits on January 3, 2011 for his household. At the time, Respondent reported his own SSI income, but reported no income for his son. In September 2012, the Respondent applied for State Emergency Relief benefits (SER) and again reported income for himself, but not his son. Finally, a Redetermination was submitted to the Department, signed and dated on December 3, 2012 by Respondent, and this time he reported income for his wife and himself, but none for his son.

The Department sought verification of Respondent's son's RSDI Income from the Social Security Administration (SSA). The SSA sent verification to the Department received by the Department on May 16, 2013 indicating that the Respondent's son received \$ [REDACTED] in RSDI benefits for April 2012 and then received a reoccurring payment of \$ [REDACTED] from May 2012 forward. Exhibit A, p. 43. The Department also relied upon a SSA letter dated March 13, 2012 indicating that respondent's son would receive a first check of \$ [REDACTED] for money due through March 2012 and then \$ [REDACTED] each month thereafter. Exhibit A, p. 44. The letter also indicates that \$ [REDACTED] of Respondent's son's benefits were being used to recover some or all of an overpayment.

Respondent testified that his son did not receive any RSDI benefits in 2011 or 2012. He also testified that in 2013 there was a notice indicating a recoupment action was being taken to collect benefits improperly paid except there had never been any benefits paid to his son and instead only to his wife and himself. Any benefits that SSA said they were issuing to his son were recouped by SSA for an overpayment before the payment ever made it to Respondent or his son. Respondent also referenced that he received multiple letters from SSA, each stating something to the effect as "as we told you before", but that Respondent never knew what it was that started everything or what was previously mentioned. Finally, Respondent testified that he never intentionally misled the Department and that he was appreciative of the Department's assistance, especially his caseworker who had gone over and above what was expected of her.

At the hearing, [REDACTED] testified that Respondent appeared to be a model client because of his prompt return of documents, lengthy case notes, and continuous contact with the Department. After hearing Respondent's testimony, [REDACTED] testified that he believed Respondent when Respondent explained that during this period, the status of SSA benefits for his son and wife were confusing.

Based upon all of the evidence presented, the Department has not shown by clear and convincing evidence that the Respondent intentionally withheld or misrepresented information for the purposes of establishing, maintaining, increasing, or preventing reduction of his FIP benefits.

### 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. 16. Clients are disqualified for ten years for a FIP and 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. 17. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is **not** subject to a disqualification from his receipt of FIP benefits on the basis of IPV.

### 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 FIP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (January 2016), p. 6.

In this case, the Department has alleged an OI in the amount of \$ [REDACTED] for the period from June 1, 2012 through December 31, 2012. It is unclear when the SSA actually issued RSDI benefits to Respondent's son. The Respondent testified that he was experiencing a confusing time with regard to any and all SSA benefits. He also testified that he truthfully reported income while he was receiving it. As a result of the numerous questions raised as to when Respondent's son received RSDI benefits and when money was recouped for overpayments, the Department has not met its burden of proof by a preponderance of the evidence to establish an OI of Respondent's FIP benefits.

## 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 program benefits in the amount of \$ [REDACTED] from the FIP.

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

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



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**



**Respondent via USPS**

