



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 15, 2017  
MAHS Docket No.: 17-009433  
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 December 4, 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 Respondent receive an overissuance (OI) of Family Independence Program, (FIP) Cash Assistance that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving benefits for FAP?
5. Should Respondent be disqualified from receiving benefits for FIP Cash Assistance?

### 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 October 30, 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 and FIP Cash Assistance issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in income and employment.
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, 2010, through March 31, 2010, **FAP** (fraud period).
7. The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2010, through August 31, 2010, for **FIP** (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 \$0 in such benefits during this time period. [Exhibit A, p. 3.]
9. The Department alleges that Respondent received an OI in **FAP** benefits in the amount of \$ [REDACTED]
10. During the alleged fraud period Respondent was issued \$ [REDACTED] in FIP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0 in such benefits during the fraud period.
11. The Department alleges that Respondent received an OI in **FIP** benefits in the amount of \$ [REDACTED]
12. The total overissuance for both benefit programs the Department seeks to recoup is \$ [REDACTED]
13. This was Respondent's first alleged IPV for FAP benefits and FIP benefits.

14. 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 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-.3131.

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 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 or more, or
  - the total amount is less than \$500, 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 (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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

Income reporting requirements are limited to the following:

- Earned income:
  - Starting or stopping employment.
  - Changing employers.
  - Change in rate of pay.
  - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 9.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report her household income and/or employment at Evangelical Homes, (earned income) in a timely manner, which caused an overissuance of FAP benefits. [Exhibit A, pp. 1 and 4.]

The Department presented the following evidence in support of its claim of Intentional Program Violation.

The Department presented Respondent's application dated September 23, 2009, to show that she was aware of her responsibility to report changes as required. [Exhibit A, pp. 12-29.] The Respondent reported that she had no employment at the time of the application which was correct. [Exhibit A, p. 46.]

The Respondent also was working during all of the year 2010. [Exhibit A, p. 46.]

The Department presented a Notice of Case Action dated November 9, 2009, showing that the FAP benefits were based upon no earned income. In addition, a change report was sent with the notice advising the Respondent about her household income reporting requirements. [Exhibit A, p. 28, 31.] At the time of the Notice, the Respondent had not begun employment.

The Department presented a Notice of Case Action dated February 13, 2010, cancelling her FAP benefits and closing the Respondent's FAP case due to failure to verify information.

The Department presented a verification of wages from [REDACTED] which demonstrated that Respondent's employment began November 29, 2009, through August 2010. [Exhibit A, p. 3.]

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP and FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, intentionally withheld her earned income and did not establish an overt act to establish she misrepresented facts to the Department. The Department presented Respondent's application; however, this document was submitted before the alleged fraud period. Moreover, the Department presented employment verifications. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld her employment income. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented his income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP 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. 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP and FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program or the FIP program. BAM 720, p. 16.

**Overissuance**

As stated above, there was no IPV committed in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her earned income. In regards to policy, the evidence established that Respondent did not report the income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9. Thus, an OI is present in this case.

Applying the overissuance period standard, it is found that the Department applied the appropriate OI begin date of January 1, 2010. [BAM 715, pp. 4-5 and Exhibit A, pp. 4 and 25.]

Additionally, when a client group receives more benefits than they are 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 715, p. 6.

In this case, the Department presented OI budgets for FAP beginning January 1, 2010, through March 31, 2010. [Exhibit A, pp. 29-47.] A review of the OI budget found it to be fair and correct. See BAM 715, p. 8. The Department also presented benefit issuance summaries demonstrating the Respondent receive both FAP and FIP benefits during the fraud periods for these benefits. It should be noted that during the hearing, it appeared that the OI budget for January 2010 was improperly calculated. [Exhibit A, pp. 56-72.] After thorough review of the evidence record, the undersigned finds that the

OI budgets were properly calculated except for January 2010 where the Department could not explain the change in group size to four members; and the discrepancy was not resolved. Thus, the FAP benefit OI is reduced by the amount of FAP benefits received for January 2010 in the amount of \$[REDACTED]. The new FAP OI amount which the Department is entitled to receive based upon the proofs is \$[REDACTED].

Respondent was ineligible for FAP benefits for the remaining two months because her income had been originally reported as zero; and when the actual earnings were factored in, the income caused the FAP benefits to be reduced. Thus, the Department is entitled to recoup \$[REDACTED] of FAP benefits it issued for February 2010 and March 2010.

#### FIP Overissuance

The Department also presented FIP cash assistance budgets to demonstrate the OI for FIP benefits received. The budgets were reviewed at the hearing and demonstrated that for the entire period, January 2010 through August 31, 2010, the Respondent was ineligible to receive FIP due to excess income. The budgets as presented are correct and accurate. [Exhibit A, p. 48-65.] The Respondent was not entitled to any of the FIP benefits received as her income exceeded the \$[REDACTED] payment standard for all the months. Based upon the budgets presented, the Department has established a FIP OI in the amount of \$[REDACTED] which the Department is entitled to recoup. [Exhibit A, p. 48.]

Thus, the Department has demonstrated that it is entitled to a total OI for \$[REDACTED] that it is entitled to recoup.

### **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** receive an OI of program benefits in the amount of \$[REDACTED] in FAP and \$[REDACTED] in FIP Cash Assistance. The total overissuance is \$[REDACTED].

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

LF/jaf



**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



**Petitioner**

[REDACTED]

**DHHS**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

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