



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.: 17-009539  
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 December 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 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 June 22, 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 accurately report his circumstances to the Department and to disclose drug-related felony convictions.
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 November 18, 2014, through March 31, 2015, (fraud period).
7. The Department alleges that during the FAP fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent's group 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 FAP and the Department has requested a 12-month disqualification from the FAP.
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).

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.

Department policy clearly demands that to establish a FAP or FIP IPV, the Department is required to establish that there was an overissuance of benefits. See also Bridges Policy Glossary (October 2015), p. 36 (defining IPV as “a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative”).

In this case, the Department alleges that Respondent received a FAP overissuance totaling \$■■■■ for the period between November 2014 and March 2015 because he failed to disclose that he had two or more drug-related felony convictions. People convicted of

certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), pp. 1-2. For FAP cases, effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified from the FAP if both offenses occurred after August 22, 1996. BEM 203, pp.1-2. The Department asserted that because of Respondent's felony drug convictions, he was ineligible to receive FAP benefits during the fraud period and should not have been included as a member of his FAP group. The Department asserted that Respondent's remaining group members were still eligible for assistance.

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 and FIP 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. (Exhibit A, pp. 148).

At the hearing, the Department presented a typed document titled Department of Human Service Office of Inspector General Budget Worksheet showing a summary of the alleged amount issued, the alleged correct/eligible issuance, and the alleged OI for each month in the FAP fraud period. (Exhibit A, p. 60). Although the Department presented a FAP Eligibility Summary detailing the amount of benefits issued to Respondent's six-person group size each month, the Department did not present any evidence in support of its position that Respondent was eligible to receive \$ [REDACTED] in FAP benefits during the fraud period.

The Department, relying on the Food Assistance Issuance Table (RFT 260 October 2014), testified that it calculated the alleged FAP OI of \$ [REDACTED] by removing Respondent from the FAP group; however, the Department failed to include any FAP OI budgets or other documentation for the period at issue to show what amount of FAP benefits Respondent's group would have been eligible to receive after Respondent was removed from the household for the fraud period. It was also unknown whether Respondent or his group members had earned or unearned income during the fraud period.

After further review, based on the evidence presented, the Department has failed to establish that Respondent's group was eligible to receive \$ [REDACTED] in FAP benefits and that he received a FAP OI of \$ [REDACTED] during the FAP fraud period.

Accordingly, because the Department has failed to establish that Respondent was overissued FAP benefits in the amount of \$ [REDACTED] and because OI is a condition of an IPV, the Department cannot establish a FAP IPV in this case. Therefore, because there is no FAP IPV, Respondent is not subject to a disqualification from future receipt of FAP benefits. BAM 720, p. 16.

**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 of the FAP.
2. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to delete the \$ [REDACTED] FAP OI and cease any recoupment and/or collection action.



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]  
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