



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 14, 2017  
MAHS Docket No.: 17-009551  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 12, 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 Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 24 months?

**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 report her absconder status.
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 1, 2016, through December 31, 2016 (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 \$0 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 second 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 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 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 (January 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.

The Department alleged that Respondent was overissued FAP benefits in the amount of [REDACTED]. Effective October 1, 2014, the Department requests IPV hearings when the overpayments are in excess of \$ [REDACTED] or when prosecution of welfare fraud or FAP trafficking is declined by the prosecutor, the overissuance amount is less than \$ [REDACTED] and the group has a previous IPV. Although the overissuance amount is less than \$ [REDACTED] the Department presented evidence that the group has a previous IPV. Therefore, the Department properly requested an IPV, per policy.

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 by misrepresenting her circumstances by failing to disclose that she was an absconder and in violation of her probation sentence. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2016), p. 9. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. A person who violates a condition of probation or parole imposed under a federal or state law is disqualified from receipt of FAP benefits and the disqualification continues as long as the violation occurs. BEM 203, pp. 1-2.

In support of its contention that Respondent committed an IPV, the Department presented an Order of Probation signed by Respondent on [REDACTED]. Respondent signed the agreement that set forth the terms of her probation. The Department presented a bench warrant that was issued for Respondent on [REDACTED], for the violation of the terms of her probation. The Department also presented the Register of Actions regarding Respondent's criminal case that resulted in the bench warrant. The document was sent to the Department on June 7, 2017. The last action taken on the case was the issuance of the bench warrant on [REDACTED]. The document does not indicate the bench warrant was recalled, indicating it is still active.

The Department also presented a redetermination that was submitted on and signed by Respondent on November 17, 2016. Respondent responded "no" to the question asking whether anyone in the household was in violation of probation or parole.

The documentation presented by the Department was sufficient to establish Respondent was in violation of her probation as of [REDACTED], and continued throughout the fraud period. Based on the evidence presented, Respondent was required to disclose her status as a probation violator on the redetermination that was

submitted. Respondent's failure to accurately disclose her status in response to the question posed was sufficient to establish that Respondent intentionally withheld or misrepresented information for the purpose of obtaining or maintaining FAP benefits. Under these circumstances, the Department has established by clear and convincing evidence that Respondent committed an IPV in connection with his FAP case.

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

The Department requested that Respondent be subject to a 24-month disqualification period. In support of its argument, the Department presented Respondent's IPV Sanction Summary, which showed Respondent had a previous FAP IPV violation. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP. As Respondent has a previous IPV disqualification, she is subject to a two-year disqualification from her 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.

As discussed above, Respondent, based on her probation absconder status, was a disqualified member of his FAP group and not eligible for FAP benefits issued to her during the fraud period. Because Respondent was the only member of her FAP group, she was ineligible for any of the FAP benefits issued to her during the fraud period. The benefit summary inquiry presented by the Department shows that during the fraud period, Respondent was issued \$[REDACTED] in FAP benefits. As Respondent was in absconder status during the fraud period, she would not be entitled to those benefits. Accordingly, the Department has established that an overissuance occurred in the amount of \$[REDACTED] and it is, therefore, entitled to recoup that amount for FAP benefits it issued to Respondent during the fraud period.

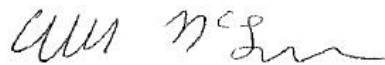
### **DECISION AND ORDER**

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

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

It is FURTHER ORDERED that Respondent be disqualified from FAP benefits for a period of **24 months**.



EM/

---

**Ellen McLemore**

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]