



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: November 17, 2017  
MAHS Docket No.: 17-010219  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Denise McNulty**

**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 15, 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 Respondent receive an overissuance (OI) of Family Independence Program (FIP) benefits 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 and/or 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 29, 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 and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report her employment and to provide information on her applications accurately and honestly.
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 July 1, 2014, to December 31, 2014, (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. 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$ [REDACTED]
11. This was Respondent's first alleged IPV.
12. 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 to .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.

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 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.

- The client was clearly and correctly instructed regarding his or her reporting responsibilities.
- 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.

In this case, the Department alleges Respondent committed an IPV of her FAP and FIP benefits by failing to report her employment thereby establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. The Department alleged Respondent was employed at the time she submitted her applications for assistance and intentionally failed to notify the Department of her employment.

A group's financial eligibility and monthly benefit amount are determined using: (i) Actual income (income that was already received); or (ii) Prospected income amounts (not received but expected). BEM 505 (October 2017), p. 1. Available countable income is used to determine eligibility for FAP benefits. BEM 550 (January 2017), p. 5. Available income is income that is actually received or reasonably anticipated. Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. BEM 505 p. 1. A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505 p. 1.

In support of its contention that Respondent committed an IPV, the Department presented the application submitted by Respondent in June 2014 (FIP) and the redetermination submitted in September 2014 (FIP and FAP), showing Respondent failed to provide information that she was employed. [Exhibit A, pp. 19 and 31.] On the June 2014 application, Respondent left the box blank when replying to the question "job commitment or looking for work?" [Exhibit A, p. 19] On the redetermination, Respondent checked the "no" box when responding to the question, "{d}oes anyone in your household have income?" [Exhibit A, p. 31.] Respondent signed both documents,

under penalty of perjury, indicating that the application/redetermination was complete and accurate. [Exhibit A, pp. 24 and 33.]

The Department presented evidence, received from the employer, showing Respondent began employment on May 20, 2014 and continued in that employment until December 14, 2014. [Exhibit A, pp. 35-37.] The case notes in Respondent's case show she was interviewed in June 2014 and in September 2014, by the Department, and each time Respondent stated she was unemployed. [Exhibit A, p. 34.] The Department also presented an issuance summary showing Respondent was issued both FIP and FAP benefits.

Respondent's failure to report her employment when she had the opportunity to do so on numerous occasions and after having been notified of the duty to report any employment beginning or ending was sufficient to establish that she intentionally withheld information that, if properly disclosed, would have reduced her FAP and FIP benefits. Under these circumstances, it is found that the Department established by clear and convincing evidence that Respondent committed an IPV in connection with her FAP and FIP cases.

### **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, pp. 15-16; BEM 708 (4/1/16), p. 1. A disqualified recipient remains a member of an active group as long as she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16. 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. 17. 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP and FIP benefits. Because this was Respondent's first FAP IPV and FIP IPV, she is subject to a one-year disqualification from receipt of both FIP and FAP 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 FAP/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 (1/1/16), p. 6; BAM 705 (1/1/16), p. 6.

FAP

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. The Department presented an issuance summary showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. [Exhibit A, p. 38.] Respondent's FAP group consisted of two people. The Department presented FAP budgets which demonstrated that once the earnings from the unreported employment were taken into consideration Respondent was only eligible for \$ [REDACTED] of the FAP benefits issued to her during the fraud period. [Exhibit A, pp. 47-58.]

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits during the fraud period.

FIP

In this case, the Department alleged that Respondent was overissued FIP benefits totaling \$ [REDACTED] during the fraud period. The Department presented an issuance summary showing that Respondent was issued \$ [REDACTED] in FIP benefits during the fraud period. [Exhibit A, p. 38.] Respondent's FAP group consisted of two people. The Department presented FIP budgets which demonstrated that once the earnings from the unreported employment were taken into consideration Respondent was only eligible for \$ [REDACTED] of the FIP benefits issued to her during the fraud period. [Exhibit A, pp. 47-58.]

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FIP benefits 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 of her FAP and FIP benefits.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]
3. Respondent did receive an OI of FIP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] for the OI of FAP benefits in accordance with Department policy less any amounts already recouped/collected.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] for the OI of FIP benefits in accordance with Department policy less any amounts already recouped/collected.

It is FURTHER ORDERED that Respondent be disqualified from receipt of FAP and FIP benefits for a period of **12 months** due to IPV.



DM/jaf

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**Denise McNulty**

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]

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[REDACTED]  
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