



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: December 15, 2017  
MAHS Docket No.: 17-010236  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Michael Crews**

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**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 20, 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 Food Assistance Program (FAP) benefits?
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 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 issued by the Department.
4. Pursuant to a Redetermination dated October 16, 2015, Respondent was advised that she could be prosecuted for fraud and/or required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid, or withheld facts which caused her to receive assistance that she should not have received or more assistance than she should have received.
5. The Department alleges that 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 [REDACTED] (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. The Department alleges that Respondent was issued FAP benefits from the State of Indiana while receiving FAP benefits from the State of Michigan during the fraud period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. This was Respondent's first alleged IPV and the Department has requested a ten-year disqualification due to concurrent receipt of benefits.
11. 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 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 \$500.00 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 (January 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.

In this case, the Department alleges that Respondent committed an IPV because she received FAP benefits from the State of Michigan at the same time that she received food assistance benefits from the State of Indiana. A person cannot receive FAP benefits in more than one state for any month. BEM 222 (July 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 4.

The Department presented the Respondent's IG-311 FAP transaction history which showed that Respondent used Michigan-issued FAP benefits in [REDACTED] from December 5, 2015 through May 26, 2016 (Exhibit A, pp. 44-45). While this evidence may be sufficient to establish that Respondent no longer resided in Michigan during the fraud period and was no longer eligible for FAP benefits, as to concurrent receipt of benefits, a person commits an IPV if she is found by administrative hearing process to have made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (January 2015), p. 1.

In support of its contention that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits, the Department presented an application dated August 29, 2015 which listed a Michigan address (Exhibit A, p. 13). In addition, the Department presented information obtained from a collateral contact made with the authorities in the State of [REDACTED] on January 11, 2017. The Department requested information concerning Respondent's current assistance benefits issued in [REDACTED] Respondent was identified by name along with an [REDACTED] address. The record showed that food assistance benefits were issued in [REDACTED] beginning January 2015 through October 1, 2016 (Exhibit A, p. 46). The Department's Benefit Summary Inquiry further showed FAP benefits issued in Michigan to the Respondent from October 1, 2015 through May 31, 2016 (Exhibit A, p. 43).

Here, Respondent did receive food assistance benefits from [REDACTED] at the same time that she received FAP benefits in Michigan during the fraud period. However, the Department's evidence did not establish that Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP

benefits simultaneously. The evidence failed to set forth that Respondent submitted documentation to the Department alleging a Michigan address during the period she was residing in [REDACTED]. Thus, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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 (October 2014), p. 15-16. 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 where the client made fraudulent statements regarding identity or residency, and, for all other IPV cases involving FAP, there is a standard disqualification period of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16.

As discussed above, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of food assistance benefits. Therefore, Respondent is not subject to a ten-year disqualification as to her FAP benefits.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. In this case, the Department alleges that Respondent received an OI of FAP benefits. 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleged a \$ [REDACTED] FAP OI during the FAP fraud period based on Respondent's concurrent receipt of food assistance benefits. As set forth above, Respondent did receive food assistance benefits from Indiana at the same time that she received FAP benefits in Michigan during the fraud period. Therefore, Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Indiana. BEM 222, p. 3.

However, the benefit summary inquiry presented by the Department only showed the FAP benefits issued in Michigan to Respondent from October 1, 2015 through May 31, 2016, which totaled \$ [REDACTED] (Exhibit A, p. 43).

Because Respondent was not eligible for any of the FAP benefits issued from Michigan during the fraud period in which she also received food assistance benefits from Indiana, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits beginning October 1, 2015 through May 31, 2016, which was 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

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



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**Michael Crews**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

MC/kl

**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**

A large black rectangular redaction box covering the email address.

**Respondent via USPS**

A large black rectangular redaction box covering the USPS address.