



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.: 17-010291  
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 Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for FAP?

**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 issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in income and employment as well as all household members residing in the home, including spouses.
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, 2015, through July 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 \$ [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 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 (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 addition, clients must correctly and honestly report group members residing with them who should be included in the FAP group. Spouses who are legally married and live together must be in the same FAP group. BEM 212 (October 2015), p. 1. Thus, the Respondent's husband should have been included in Respondent's FAP group because the documentation presented established that they signed a lease for the address where Respondent lived at the time of the alleged IPV; and driver's license information demonstrated Respondent and her spouse resided at the same address; and also acknowledgment of the marriage was demonstrated by Facebook posts. [Exhibit A, pp. 145, 102-103 and 144.]

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report her husband living in the household with her and also failed to report her husband's income when applying for FAP. Because the group size was incorrect, benefits were calculated without Respondent's husband as a group member; and his income was also not included causing the Respondent allegedly to receive more FAP benefits than she was entitled to receive.

Moreover, the Department alleges that Respondent received an OI of \$██████ in FAP benefits. [Exhibit A, pp. 1 and 4.] 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 720, p. 8. In an attempt to

establish the OI amount, the Department presented Respondent's FAP budgets for the period of January 1, 2015, through July 31, 2015, in order for the undersigned to review. [Exhibit A, pp. 109-142.] However, before the undersigned can even proceed to reviewing the OI budgets, the Department must first present evidence showing the *actual* amount of earnings and verification of earnings received during the OI period. See BAM 720, p. 8. Although the Department was able to establish that FAP benefits were issued, the Department did not establish the actual income received because it relied on the Respondent's spouse's income tax return which was not presented as the Department could not release the return. BAM 803 (December 2017), p. 1. In addition, the recoupment specialist gave no explanation how the monthly income amount was determined. An examination of the overissuance budgets indicates an income amount with a monthly pay date and that the tax return was used. The Department did not present any attempt to seek verification of employment by Respondent for her husband. Although an IG-001 was presented, the income shown on the Wage Match was different than the income used in the budgets because the Department used the tax return. [Exhibit A, p. 148.]

For example, the OI budget for January 2015 indicated that Respondent received \$█████ in income. [Exhibit A, p. 109.] As a result, the Department would need to present verification of employment showing that Respondent *actually* received \$█████ in income for January 2015. Proof of the actual amount of income can be identified by Wage Match, consolidated inquiry, verification by the employer or work number; here, no information to support and establish the income was presented. See BAM 700. The Department failed to present such evidence showing the actual amount of income from employment Respondent's husband received during the OI period. The undersigned considered that the husband was allegedly working for a family business; however, no subpoenas requesting wage and earnings information were sought.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (October 2016), pp. 35-36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether the Department policy was appropriately applied. BAM 600, p. 38.

In order to establish and IPV and an overissuance Department policy provides:

If improper reporting or budgeting of income caused the overissuance, use actual income for that income source. Bridges converts all income to a monthly amount.

**Exception:** For FAP only, do not convert the averaged monthly income reported on a wage match.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 8 (October 2017); BAM 720, p. 10, (October 2017)

Based on the foregoing information and evidence, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI of FAP benefits. Remember, policy states that 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 720, p. 8 (emphasis added). Pursuant to this policy, the Department must present evidence showing the actual amount of income received as well as what it is based upon and how it was determined in order to establish an OI of FAP benefits. Stating on the overissuance budgets that the income was derived from a tax return with no explanation how it was calculated is insufficient. As shown above, the Department failed to present any such evidence showing the amount of employment earnings received during the OI period by Respondent's husband. Therefore, the Department has failed to establish by a preponderance of evidence that Respondent received an OI of \$5,485 in FAP benefits.

Furthermore, Department policy states that suspected IPV means an *OI exists* for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1 (emphasis added). Moreover, the Bridges Policy Glossary (BPG) defines 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. BPG 2015-015 (October 2015), p. 36 (emphasis added). Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-015, p. 36. Because the Department cannot establish an OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.

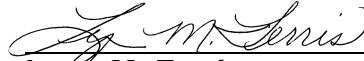
### **DECISION AND ORDER**

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.
2. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) food assistance.

The Department is ORDERED to delete the OI for \$ [REDACTED] and cease any recoupment action.

LF/jaf



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**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]