



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: January 18, 2018  
MAHS Docket No.: 17-001419  
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, an in-person hearing was held on October 18, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent was present and represented herself.

**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) of the FAP?
3. Should Respondent be disqualified from receiving FAP benefits?

**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 January 31, 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 any changes in income for her household within 10 days of receipt of the first paycheck and the responsibility to respond honestly and accurately to questions on applications and redeterminations.
5. The Department is not aware of the Respondent having any 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 September 1, 2015, to February 20, 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. Respondent's son, a group member, began working for [REDACTED] (Employer) in July 2015. [Exhibit A, pp. 37.] Respondent did not report any of her son's income on applications or redeterminations.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. 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.

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 (1/1/16), 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 (10/1/16), 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). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct, weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits, because she failed to notify the Department of a group member's employment income when she completed applications and mid-certification. [Exhibit A, pp. 21-22, 33.] The Department alleged Respondent's son, a group member, was employed throughout the fraud period; and Respondent intentionally failed to report his employment income when she applied for assistance and submitted a mid-certification.

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 (October 2017), 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 (October 2017), p. 1. All sources of earned income from wages or training, for an individual under the age of 18, is not included in the available income for a household. BEM 501 (July 2017), p. 2.

In support of its contention that Respondent committed an IPV, the Department presented the application and mid-certification submitted by Respondent in December 2015 and February 2016 showing Respondent failed to report her son's employment income and indicated the household had no earned income. [Exhibit A, pp. 21-22, 33.] The Department presented an employee wage history showing the group member was employed full-time when Respondent submitted the December 2015 application and February 2016 mid-certification. [Exhibit A, pp. 36-38.] On each application and mid-certification, Respondent was advised of her responsibility to report complete and accurate information and the penalty for failing to do so. [Exhibit A, pp. 30, 35.] Additionally, the Department presented information showing Respondent was advised of her responsibility to report the start of employment, for all group members, within 10 days of receipt of the first paycheck. [Exhibit A, p. 53.] The evidence shows that Respondent's son worked, on average, 40 plus hours per week; and grossed, on average, more than \$2,000 per month. [Exhibit A, pp. 36-38.]

Respondent attended the hearing. Her explanation for failing to report her son's employment and income was that she did not think about it because she was used to

being the provider. Other than the son's income, Respondent received Supplemental Security Income (SSI) in the amount of \$ [REDACTED] per month. Respondent's explanation was not credible, she was asked on more than one occasion whether her household had earned income; and she reported it did not.

Respondent's son had consistent income and steady employment with Employer. Respondent intentionally failed to report the employment and income. On the February 2016 mid-certification, Respondent indicated that there was no household income even though her son, a group member, had been working since July 2015. [Exhibit A, p. 33, 37.] 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 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, pp. 15-16; BEM 708 (4/1/16), p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16. Clients are disqualified for 10 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. Because this was Respondent's first FAP IPV, she is subject to a one-year disqualification from receipt of 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 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.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. The Department presented a benefit summary inquiry showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. [Exhibit A, p. 39.] Respondent's FAP group consisted of two people. [Exhibit A, p. 40.] The Department presented FAP budgets which demonstrated that once the unreported income was taken into consideration Respondent was not eligible for any of the FAP benefits issued to her during the fraud period. [Exhibit A, pp. 40-52.]

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP 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 a second IPV of FAP benefits.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

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

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months** due to the **first** 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

**Petitioner**

[REDACTED]

**DHHS**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]