



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 22, 2018  
MAHS Docket No.: 17-007478  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Denise McNulty**

**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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on October 12, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] 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 the Food Assistance Program (FAP)?
2. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?
3. Should Respondent be disqualified from receiving FAP benefits for 12 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 May 8, 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 FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. The Department did not present evidence showing Respondent was aware of the responsibility to report changes in address and residency.
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 17, 2015, through June 30, 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 FAP 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.

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. 5.

### **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 2015), 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 that Respondent committed an IPV because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of Georgia. [Exhibit A, p. 50.] A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3.

In support of its IPV allegations, the Department presented (i) an application submitted by Respondent to the Department on July 7, 2015, in which Respondent indicates her preferred written and spoken language was Spanish and that her family members were migrant workers [Exhibit A, pp. 11-48]; (ii) an email from the Georgia Department of Human Services indicating that someone with a different name received FAP benefits in Georgia from November 2015 through April 4, 2016, [Exhibit A, p. 50]; (iii) a benefit summary inquiry showing that the Department issued FAP benefits to Respondent between December 2015 through June 2016, [Exhibit A, p. 49]; and (iv) the Electronic Benefit Transfer (EBT) history showing the use of Michigan-issued FAP benefits exclusively out of state from mid-October 2015 through August 2016 (and once in October 2016), [Exhibit A, pp. 51-61.]

The evidence presented by the Department does not clearly and convincingly demonstrate that Respondent was the individual that was receiving food assistance in Georgia. The email presented by the Department references a female by a different last name than Respondent and does not provide any first name or other identifying information from which to determine the identity of the individual being referenced in the email. [Exhibit A, p. 50.] That was the only documentation presented by the Department in support of the allegation that Respondent received food assistance in Georgia.

The transaction history presented by the Department, clearly shows that Respondent used her benefits exclusively out of state for a full year. That clearly suggests that Respondent was not residing in Michigan and not present in Michigan. However, the Department must demonstrate that Respondent withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1. The electronic application submitted by Respondent in July 2015 clearly shows she did not prefer to communicate in the English language. Respondent's application states she prefers Spanish for written and spoken communications. [Exhibit A, p. 13.] Her application also indicates she has a fourth grade education and was a migrant worker. [Exhibit A, pp. 13, 15, 29.] No evidence was presented to demonstrate Respondent was advised, in Spanish, of her rights and responsibilities for receiving benefits.

Under these circumstances, it is found that the Department has not met its burden of proof demonstrating by clear and convincing evidence that Respondent committed an intentional violation of her FAP benefits nor that she received benefits concurrently with benefits received from the State of Georgia.

### **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 2015), p. 15. Clients are disqualified for 10 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.

As discussed above, the Department has not established by clear and convincing evidence that Respondent committed an IPV by concurrent receipt of benefits or by failing to report a change in address/residency. Thus, Respondent is not subject to a period of 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 (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. 49.] An individual must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220 (October 2015), p. 1. The FAP transaction history shows Respondent's EBT card was used exclusively out of state from November 2015 to October 2016. [Exhibit A, pp. 51-61.] An individual who resides outside the State of Michigan for more than 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2015), p. 3. As such, Respondent was not residing in Michigan during the FAP fraud period. BEM 212 (October 2015), p. 3.

The "10-10-12 Rule" is the unofficial name for the Department policies generally requiring at least 32 days between the date of a circumstance change and the first month that an OI can be established when based on the circumstance change. BAM 105 (October 2016), p. 11, BEM 220, pp. 7 and 12. The rule is applicable to the present case. Application of the 10-10-12 rule would result in an OI period beginning December 2015. The OI period, in accordance with policy, cannot begin earlier than December 1, 2015. As such, the Department is not entitled to recoup benefits issued outside of the OI

period, December 2015-June 2016. Accordingly, it is found that the Department has established it is entitled to recoup \$ [REDACTED] in FAP benefits used in October 2015.

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

### **DECISION AND ORDER**

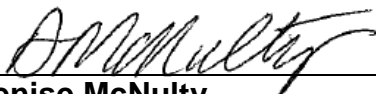
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has 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 do the following in accordance with Department policy to initiate recoupment and/or collection procedures for the FAP OI amount of \$ [REDACTED] less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent not be disqualified from receiving FAP benefits.

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]

[REDACTED]  
[REDACTED]  
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