



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 16, 2018  
MAHS Docket No.: 17-009362  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 January 3, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent with 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 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 June 9, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 her residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is January 1, 2017, through April 30, 2017 (fraud period).
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued Medical Assistance (MA) benefits from the State of Arkansas.
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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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:

- FAP trafficking OIs 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 (October 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 (January 2016), p. 6; 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (October 2016), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. Benefit duplication is prohibited. BEM 222, p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued MA benefits in Arkansas. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on September 8, 2015, in which she acknowledged that she received the Information Booklet advising of "Things You Must Do" (which explained reporting change circumstances, including residency). The Department also presented correspondence from the State of Arkansas showing the Respondent was receiving benefits in Arkansas. Respondent was denied FAP benefits, but had an active MA case in Arkansas since January 1, 2016.

The evidence presented establishes that for the period of January 1, 2016, through April 30, 2016, Respondent received Michigan-issued FAP benefits, and during the same period, received MA benefits issued by the State of Arkansas. However, policy specifically defines the concurrent receipt of benefits as the duplication of the same type of assistance during the same period. As Respondent did not receive the same type of assistance, she was not in the receipt of concurrent benefits. Therefore, the Department failed to establish that Respondent committed an IPV based on the 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, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, 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.

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. In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a 12-month disqualification under the FAP program.

### Overissuance

In support of its contention that Respondent was overissued FAP benefits, the Department presented Respondent's FAP transaction history showing that she used her FAP benefits issued by the State of Michigan exclusively in Arkansas from December 27, 2015, through April 29, 2016. Additionally, the Department presented a Clear Report showing Respondent had an Arkansas address. The Department provided sufficient evidence to establish Respondent was not residing in Michigan. As discussed above, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. There is no evidence that Respondent returned to Michigan after she began using his FAP benefits out of state. By February 1, 2016, it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p. 2. Therefore, the Department established it was entitled to recoup/collect FAP benefits that were overissued to Respondent between February 2016 and April 2016. The Department failed to establish it was entitled to recoup/collect benefits for January 2016, as Respondent had not yet been out of the state for 30 days. The Department presented Respondent's Benefit Issuance Summary, which showed Respondent was issued \$ [REDACTED] in FAP benefits between February 2016 and April 2016. Thus, the Department is entitled to recoup/collect \$ [REDACTED]

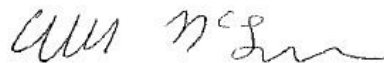
### DECISION AND ORDER

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 initiate recoupment/collection procedures for the amount of \$ [REDACTED] less any amounts already recouped/collected, in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to a disqualification from FAP benefits.



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**Ellen McLemore**

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]

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