



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: January 12, 2018  
MAHS Docket No.: 17-010173  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Laura Gibson**

**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 January 10, 2018, 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 the Food Assistance Program (FAP) and the Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and FIP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and FIP 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 27, 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 and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department, such as changes in employment and income.
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 1, 2014 to May 31, 2015 (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. During the fraud period, Respondent was issued \$ [REDACTED] in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$ [REDACTED].
11. This was Respondent's first alleged FAP IPV, and first alleged FIP IPV.
12. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

Effective October 1, 2014, 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), pp. 5, 12-13; ASM 165 (August 2016).

### **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. 7-8; 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 of the FAP and FIP because she failed to report to the Department that she had gained employment and was earning income. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (October 2014 and April 2015), pp. 9-12.

In support of its contention that Respondent committed an IPV, the Department presented: (i) a redetermination Respondent submitted to the Department on August 1, 2014; (ii) a redetermination Respondent submitted to the Department on April 30, 2015, on which Respondent reports having no income; (iii) case notes from Respondent's ACCESS worker, indicating that Respondent reported beginning work at Rainbow on August 18, 2014; (iv) a quarterly wage match inquiry showing that Respondent had earnings in the third and fourth quarters of 2014, and the first and second quarters of 2015; (v) check stubs from Respondent's employer for November 2014 and December 2014; (vi) a pay report from Respondent's employer for March 5, 2015 to April 16, 2015; and (vii) an issuance summary showing Respondent received FAP and FIP benefits from November 1, 2014 to May 31, 2015.

While Respondent reported to her ACCESS case worker that she had begun employment in August 2014, that is not sufficient to constitute reporting employment to the Department because Respondent's Department case worker would not have access to the information Respondent submitted to her ACCESS case worker. Further, Respondent had begun employment and was earning income at the time she submitted her April 30, 2015 redetermination. However, Respondent did not report any earned income on the redetermination (Exhibit A, p. 15). In her redetermination, Respondent certified that the information she provided was true, and acknowledged understanding that she could be prosecuted for fraud and be required to repay any benefits wrongfully received by her based on the information she provided (Exhibit A, p. 17).

Respondent's failure to report on her redetermination that she had earned income established that she intentionally withheld information that, if properly disclosed, would have reduced her FAP and FIP eligibility. Under these circumstances, the Department has established by clear and convincing evidence that Respondent committed an IPV in connection with her FAP and FIP cases.

### **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 ten 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. 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.

In this case, the Department has established by clear and convincing evidence that Respondent committed an IPV. Therefore, the Department is entitled to a finding that Respondent is subject to a disqualification from receiving FAP and FIP benefits. Because this was Respondent's first FAP IPV and first FIP IPV, she is subject to a one-year disqualification from her receipt of both FAP and FIP benefits on the basis of an IPV.

### **Overissuance**

In this case, the Department alleges that, because Respondent failed to report her earned income, she received FAP and FIP benefits she was ineligible to receive. 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 or FIP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

As discussed above, the check stubs, pay report, and quarterly wage match inquiry establish that Respondent had earned income during the fraud period. In consideration of Respondent's statement to her ACCESS case worker that she began employment on August 18, 2014, and her first check stub dated August 30, 2014, and taking into account the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, the FAP and FIP OI periods properly began November 1, 2014. BAM 720, p. 7.

### **FAP OI**

In this case, the Department alleged that Respondent was overissued \$1,937 in FAP benefits because she failed to report her earned income.

To establish the FAP OI amount, the Department presented FAP budgets to show the FAP benefits Respondent was eligible to receive if her unreported income had been included in the calculation of her FAP eligibility for each month. A review of the FAP OI

budgets for January 2015, March 2015, April 2015, and May 2015, shows that the Department used Respondent's quarterly income, divided to reflect each month in the quarter, and then further divided by 4 because Respondent was paid weekly.

When calculating the amount of an overissuance, if the household fails to provide verification of the earnings, the recoupment specialist is to use the income shown on the wage match report to calculate the overissuance, averaging the income over the appropriate time period. BAM 802 (April 2017), p. 3. Thus, the Department properly calculated the amount of the OI for January 2015, March 2015, April 2015, and May 2015. Respondent was issued \$1,128 in FAP benefits during this time period, and Respondent was eligible to receive \$64 in benefits. Thus, Respondent was overissued \$ [REDACTED] in FAP benefits for the months of January 2015, March 2015, April 2015, and May 2015.

Although the Department also alleged a \$ [REDACTED] OI for February 2015, no FAP OI budget was presented for that month to support the Department's position. Therefore, the Department has failed to establish a FAP OI for February 2015.

A review of the FAP OI budgets for November 2014 and December 2014 shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10. A review of the recalculated net income in the November 2014 and December 2014 budgets shows that, when Respondent's income from employment is taken into consideration, Respondent was eligible to receive \$ [REDACTED] in FAP benefits during this period. Because Respondent received \$ [REDACTED] during this period, Respondent was overissued \$ [REDACTED] in FAP benefits, the difference between the \$ [REDACTED] in FAP benefits she received and the \$ [REDACTED] she was eligible to receive for November 2014 and December 2014.

Thus, the Department has established a FAP OI in the amount of \$ [REDACTED] for the involved time period, and the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits during the fraud period.

### **FIP OI**

The Department also alleged that Respondent was overissued \$2,821 in FIP benefits because of her failure to report her earned income.

To establish the FIP OI amount, the Department presented FIP budgets to show the FIP benefits Respondent was eligible to receive if her unreported income had been included in the calculation of her FAP eligibility for each month. A review of the FIP OI budgets for January 2015 through May 2015, shows that the Department used Respondent's quarterly income, divided to reflect each month in the quarter, and then further divided by 4 because Respondent was paid weekly. As discussed above, the Department properly used the income reflected on the wage match, and thus properly calculated the FIP OI for January 2015 to May 2015 in the amount of \$ [REDACTED]

A review of the FAP OI budgets for November 2014 and December 2014 shows that the Department properly considered Respondent's actual income from employment. BAM 720, p. 10. A review of the recalculated net income in the November 2014 and December 2014 budgets shows that, when Respondent's income from employment is taken into consideration, Respondent was eligible to receive \$0 in FIP benefits during this period. Because Respondent received \$[REDACTED] during this period, Respondent was overissued \$806 in FIP benefits for November 2014 and December 2014.

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

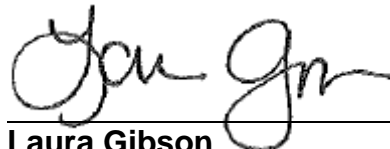
### **DECISION AND ORDER**

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 an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$[REDACTED]
3. Respondent did receive an OI of FIP benefits in the amount of \$[REDACTED]

The Department is ORDERED to

1. Reduce the FAP OI amount to \$[REDACTED] and initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of \$[REDACTED] less any amounts already recouped and/or collected;
2. Initiate recoupment and/or collection procedures in accordance with Department policy for a FIP OI in the amount of \$[REDACTED] less any amounts already recouped and/or collected;
3. Disqualify Respondent from FAP eligibility for a period of twelve months.
4. Disqualify Respondent from FIP eligibility for a period of twelve months.



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**Laura Gibson**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

LG/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**



**Respondent via USPS**

