



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: January 9, 2018  
MAHS Docket No.: 17-013822  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Michael Crews**

**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 11, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and represented himself.

**ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP 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 September 7, 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. The Department alleges that Respondent was aware of the responsibility to report changes in income and the beginning and end of employment.
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 May 1, 2014 through October 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. 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 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 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 2016), p. 7; 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.

Employment income received by the FAP group members is considered in the calculation of the FAP group eligibility and amount. BEM 556 (July 2013), pp. 2-6. FAP recipients, who are not simplified reporters and have earned income, are required to report starting employment or stopping employment. BAM 105 (April 2014), pp. 8-9. As to earned income, changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

In this case, the Department alleges that Respondent committed an IPV concerning his FAP benefits because he intentionally withheld or misrepresented information concerning his household's employment and earned income for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Subsequent to the Department's case presentation, Respondent testified that, after payment of the household bills, there was no income left for food. As such, Respondent testified that he did not report his household's employment and earned income as required because he was concerned that he would no longer be eligible for FAP benefits. Respondent stated that he was aware of his responsibility to report changes in employment and earned income when any changes occurred.

Because the Respondent admitted that he knowingly failed to report his household employment and earned income, Respondent established that he withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Under these circumstances, an IPV concerning Respondent's FAP case was established.

### **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. 15-16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, the standard disqualification period is 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, an IPV concerning Respondent's FAP case was established by clear and convincing evidence. As such, Respondent is subject to a twelve-month disqualification from 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 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the fraud period, but was eligible for only \$ [REDACTED] in FAP benefits during this period once his household income from the employers is included in his budget. As such, the FAP OI alleged is \$ [REDACTED] (\$ [REDACTED] - \$ [REDACTED]). The benefit summary inquiry establishes that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period (Exhibit A, p. 115-117).

Respondent's son was the first to obtain employment on February 28, 2014 and received his first paycheck from the employer on March 10, 2014. In consideration of the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, Respondent's income from the employer would have to be budgeted for FAP purposes beginning with the May 2014 FAP budget. BAM 105, p. 10; BAM 720, p. 7.

The Department also presented FAP OI Budgets for each month in the fraud period to show how the OI was calculated. (Exhibit A, pp. 119-154). For the August 2015 budget, the Department included the son's August 2015 gross pay of \$ [REDACTED] (Exhibit A, pp. 108, 150). However, the Department incorrectly included \$ [REDACTED] as the son's gross pay for the September 2015 budget as well (Exhibit A, p. 152). The son's September 2015 gross pay was actually \$ [REDACTED] (Exhibit A, p. 108). As the September 2015 budget relied on incorrect income, it will be removed for the purpose of calculating the FAP OI. A review of the remaining budgets shows that the Department properly calculated the FAP OI for those months.

Therefore, the Department is entitled to recoup or collect \$ [REDACTED] from Respondent in overissued FAP benefits, which is the difference between the \$ [REDACTED] OI alleged and the \$ [REDACTED] issued to Respondent in September 2015. The Department did not establish that the \$ [REDACTED] was an overissuance.

### **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. An IPV as to Respondent's FAP benefits was established by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to reduce the amount of the FAP OI 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.

It is FURTHER ORDERED that Respondent be disqualified from receipt of FAP benefits for a period of 12 months due to an IPV.



MC/kl

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**Michael Crews**  
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

**Via email**



**Respondent via USPS**

