



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: February 22, 2018  
MAHS Docket No.: 17-013516  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 February 8, 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 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 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 August 30, 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. On the Assistance Application signed by Respondent on November 3, 2014, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using her FAP benefits outside of the State of Michigan beginning in November 2015.
8. The OIG indicates that the time period they are considering the fraud period is November 2015 through September 2016.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued Supplemental Nutrition Assistance Program (SNAP) benefits from the State of Tennessee.
11. This was Respondent's **first** alleged IPV.
12. 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 (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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her 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.

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 SNAP benefits from the State of Tennessee. SNAP benefits are the equivalent of FAP benefits in the State of Tennessee. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. A person commits an IPV if she is found by administrative hearing process to have made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1. Furthermore, the Department alleges that she received FAP benefits from the State of Michigan when she was no longer a Michigan resident and failed to notify the Department of her change in residency as required. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client 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.

In support of its IPV allegations, the Department presented (i) a FAP application Respondent submitted to the Department on November 3, 2014, in which she provided a Michigan address as her home address and acknowledged her responsibility to update the Department with a change in residency (Exhibit A, pp. 11-40); (ii) a Mid-Certification Contact Notice signed on September 12, 2015, and submitted to the Department on September 16, 2015, showing a Michigan address (Exhibit A, pp. 341-343); (iii) a letter from the Department of Human Services for the State of Tennessee indicating that the Respondent received SNAP benefits in Tennessee from October 12, 2015, through February 29, 2016 (Exhibit A, p. 52); (iv) an IG-311 Electronic Benefit Transfer (EBT) History showing that Respondent used her Michigan food benefits in Tennessee from November 7, 2015, through January 25, 2016; and March 15, 2016, through September 19, 2016 (Exhibit A, pp. 44-51); and (v) a Benefit Summary Inquiry showing Michigan issued FAP benefits issued to Respondent from November 2015 through September 2016 (Exhibit A, pp. 67-68).

The evidence presented establishes that Respondent applied for Michigan-issued FAP benefits on November 2014, then applied and began receiving SNAP benefits in Tennessee beginning October 2015. The Department did not present any evidence of communications, applications, or other representations during the fraud period made to Michigan or to Tennessee about her residency during the fraud period. The

Respondent must have made a fraudulent statement or representation regarding her identity or residence in order to receive food assistance benefits in multiple states to be disqualified for concurrent receipt of benefits. BEM 203, p. 1. Therefore, the Department has not shown that Respondent is subject to an IPV for receipt of concurrent benefits. BEM 203, p. 1.

However, the evidence shows that Respondent was no longer a resident of the State of Michigan but instead a resident of Tennessee as shown by her work, driver's license, and EBT spending history as well as her receipt of Tennessee benefits. The length of time she was receiving concurrent benefits in addition to the length of time for which she used her Michigan-issued FAP benefits in Tennessee is sufficient to establish Respondent's intentional decision not to inform the Department of her move. Considering all of the evidence together, the Respondent failed to update her address with the Department as required so that she could continue receiving Michigan-issued FAP benefits. Therefore, the Department has established by clear and convincing evidence that Respondent has committed an IPV based upon her failure to report a change in residence to the Department.

### **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, 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 through concurrent receipt of the FAP benefits from Michigan and Tennessee. However, the Department did establish that Respondent committed an IPV by failing to report a change in her residence. Accordingly, she is subject to a one-year 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 (October 2015), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a \$ [REDACTED] OI during the fraud period based on Respondent's concurrent receipt of benefits and receipt of benefits without Michigan residency from November 1, 2015, through September 30, 2016. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she received food assistance benefits issued by the State of Tennessee. BEM 222, p. 3. Likewise,

Respondent was eligible for food assistance benefits from the State of Michigan only if she was residing in Michigan. BEM 220, p. 1.

The Benefit Summary Inquiry presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in total FAP benefits. (Exhibit A, pp. 67-68). Of the total FAP benefits issued, \$ [REDACTED] is attributable to the period from November 2015 through February 2016 while Respondent was receiving concurrent benefits. The remaining \$ [REDACTED] is attributable to March 2016 through September 2016 when Respondent was not a Michgian resident.

A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. Since the Respondent first began receiving concurrent benefits in November 2015, the Department properly began the OI period in November 2015. After the period of concurrent benefits, the Respondent continued to receive Michigan issued benefits while residing in Tennessee; therefore, her ineligibility continued until her FAP benefits were exhausted in September 2016.

After a review of the evidence, the Department is entitled to recoup and/or collect the OI of FAP benefits in the amount of \$ [REDACTED] from Respondent for overissued FAP benefits from November 2015 through September 2016.

### 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, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **received** an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent is disqualified from participation in the FAP program for **12 months**.



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**Amanda M. T. Marler**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

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**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]  
[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
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