



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.: 17-011514  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

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

**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 February 14, 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 benefits for the FAP?

**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 July 26, 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. Respondent **was** aware of the responsibility to truthfully and accurately answer all questions on the applications and redeterminations for benefits.
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 September 2014 through July 2016 (fraud period).
7. During the fraud period, Respondent was issued FAP benefits by the State of Michigan.
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 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.

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), pp. 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 because she misrepresented her husband's circumstances by failing to disclose that her husband had two or more drug-related felony convictions each occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 2014, April 2016), pp. 6, 9. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2015, October 2015), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated and the qualifying conviction occurred after August 22, 1996, or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use, or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and (11). The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

The Department presented documentation including two Register of Actions from the Third Circuit Court detailing Respondent's husband's criminal history. (Exhibit A, pp. 153-156). According to the records provided, Respondent's husband had two drug-related felony convictions after August 22, 1996. His first conviction was on September 26, 2005, for Controlled Substance-delivery or manufacturing of marijuana. In the second case, he was convicted of Controlled Substance-delivery or manufacturing of marijuana on November 15, 2005. The cited statutory grounds for each set of convictions in the documents presented establish that Respondent had two felony drug convictions. Each conviction has possession, use, or distribution of a controlled substance as an element.

In support of its contention that Respondent committed an IPV, the Department presented three applications for benefits and two Redeterminations signed by the Respondent or where she filled out the document as an authorized representative. On each document, Respondent indicated that no one in her household had any drug felony convictions after August 22, 1996. (Exhibit A, pp 12-152). The assistance Applications and Redeterminations clearly instructed Respondent to provide true and complete information. She was also advised of the penalties for failing to respond truthfully.

Respondent did not truthfully identify her husband's drug-related felony convictions on the Redeterminations or the Applications. The Department's evidence establishes by clear and convincing evidence that Respondent was advised of her responsibility to accurately report his circumstances, and that Respondent intentionally withheld information that if properly disclosed, would have made him ineligible for FAP benefits. Under these circumstances, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP.

### **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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

### **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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged that Respondent was issued FAP benefits in the amount of \$ [REDACTED] from September 2014 through May 2015 and March 2016 through July 2016, and that due to her husband's drug-related felony convictions, she was overissued benefits because of the larger group size. The Department did not provide any eligibility summary or a benefit issuance summary for the hearing. However, the Department provided budgets for each month of the OI period indicating the amount of benefits received by Respondent and the amount that should have been received based upon the reduced group size. As discussed above, Respondent's husband was an ineligible group member for FAP benefits as he was subject to a permanent disqualification from the FAP.

A review of the OI budgets shows that the Department properly calculated Respondent's FAP benefit amount once her husband was removed from the group. However, in reviewing the budgets, the original FAP benefit issuance amount prior to the removal of Respondent's husband from the group does not match the amount the family should have received based upon the Food Assistance Issuance Tables found in RFT 260. For example, in January 2015, the Department properly calculated Respondent's household net income to be \$ [REDACTED] and that based upon a group size of

four after the removal of Respondent's husband from the group, that the benefit rate should be \$ [REDACTED]. Yet when looking at the original benefit rate issued to Respondent, the Department lists the rate as \$ [REDACTED] for what should be a group size of five. In reviewing RFT 260, a group size of five with a net income of \$ [REDACTED] should receive a benefit rate of \$ [REDACTED]. RFT 260 (October 2014), p. 9. Inexplicably, the Department is alleging that Respondent received an extra \$ [REDACTED]. This same problem appears throughout the OI budgets with a difference of \$ [REDACTED] to \$ [REDACTED] based upon RFT 260 and the amount alleged as having been previously issued to the Respondent. Without some additional evidence showing what the Respondent was actually issued or why the Respondent was issued more benefits than she should have based upon RFT 260, the Department has met its burden in establishing an OI based upon a large group size than what Petitioner's group size should have been, but has not met its burden of proof in establishing the total value of the OI.

### **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. The Department **did not** satisfy its burden of showing that it correctly calculated the overissuance amount and must recalculate the OI for the fraud period September 2014 through July 2016.

The Department is ORDERED to recalculate the correct OI amount in accordance with Department policy and send the Respondent a Notice of Overissuance. Respondent shall have the right to request a hearing regarding the OI amount in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of **12 months**.



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**Amanda M. T. Marler**  
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]  
[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
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