



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: March 9, 2018  
MAHS Docket No.: 17-010791  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on February 6, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

**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 the Food Assistance Program (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. On an application for assistance dated July 28, 2015, Respondent acknowledged her duties and responsibilities including the duty to report all benefit group members living in the home and their countable income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-31.

2. Respondent acknowledged under penalties of perjury that her July 28, 2015, application for assistance was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 31.
3. Respondent reported on July 28, 2015, that the father of her child was not living in her home. Exhibit A, pp 17.
4. On an application for assistance dated August 27, 2015, Respondent acknowledged her duties and responsibilities including the duty to report all benefit group members living in the home and their countable income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 32-47.
5. Respondent acknowledged under penalties of perjury that her August 27, 2015, application for assistance was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 47.
6. Respondent reported on August 27, 2015, that the father of her child was not living in her home. Exhibit A, pp 37.
7. On a Redetermination (DHS-1010) form received by the Department on February 10, 2016, Respondent reported that no one had moved into her home or left her home. Exhibit A, pp 48-54.
8. Respondent acknowledged under penalties of perjury that her February 10, 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 54.
9. On an application for assistance dated May 13, 2016, Respondent acknowledged her duties and responsibilities including the duty to report all benefit group members living in the home and their countable income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 55-69.
10. Respondent acknowledged under penalties of perjury that her May 13, 2016, application for assistance was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 69.
11. Respondent reported on May 13, 2016, that the father of her child was not living in her home. Exhibit A, pp 59f.
12. On a Redetermination (DHS-1010) form received by the Department on May 13, 2016, Respondent reported that no one had moved into her home or left her home. Exhibit A, pp 70-77.
13. Respondent acknowledged under penalties of perjury that her May 13, 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 77.

14. The father of Respondent's child has been employed since July 15, 1991, and he received earned income from July 10, 2015, through June 24, 2016. Exhibit A, pp 81-84.
15. Respondent received Food Assistance Program (FAP) benefits as a group of two including herself and her minor child (██████████) totaling \$██████████ from September 1, 2015, through June 30, 2016. Exhibit A, pp 93-94.
16. On July 20, 2017 the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$██████████ overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
17. The Department's OIG filed a hearing request on July 20, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
18. This was Respondent's first established IPV.
19. 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or

- the total OI amount is less than \$500, 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

### **Overissuance**

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include changes to the persons in the home and their employment status. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

Respondent acknowledged her duties and responsibilities on application for assistance dated July 28, 2014, August 27, 2015, and March 16, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that each of her application forms, as well as Redetermination (DHS-1010) forms received by the Department on February 10, 2016, and May 13, 2016, were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete.

Respondent consistently reported to the Department that the father of her child was not living in her home.

Parents and their children under 22 years of age who live together must be in the same FAP benefit group. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom, or living room. Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), pp 1-3.

Respondent did not dispute that she rents her home from the father of her child or that he occasionally stays in the home.

Department policy does not contain any threshold for the amount of time an adult must spend in a home to be considered living with the other residents of that home. It was not disputed during the hearing that Respondent and the father of her child had filed for divorce and that the father of her child was frequently away from the work as part of his employment.

However, the father of Respondent's child is a mandatory member of Respondent's FAP benefit group if he is considered living in Respondent's home. The hearing record supports a finding that the father of Respondent's child was living with the benefit group as defined by BEM 212.

Since the father is a mandatory member of Respondent's FAP benefit group as defined by BEM 212, his income is countable towards the group's eligibility for FAP benefits regardless of how much financial support he provided to the group. Since his income was not applied towards her eligibility for FAP benefits from September 1, 2015, through June 30, 2016, the group received an overissuance of FAP benefits because their total gross monthly income exceeded the gross monthly income limit. See Department of Health and Human Services Reference Table Manual (RFT) 250. It was not disputed that the father's gross monthly income caused Respondent's FAP group to be ineligible for ongoing benefits.

### **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, 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).

The Department has the burden of establishing by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged her duties and responsibilities on applications for assistance dated July 28, 2015, August 27, 2015, and May 13, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent consistently reported to the Department during her receipt of FAP benefits that the father of her minor child was not living in her home.

However, the circumstances of Respondent's living arrangements is inconsistent with the information she reported to the Department and the father should have been made a part of the FAP benefit group.

It is not clear from hearing record whether the presence or absence of the father was discussed during routine eligibility interviews with Respondent's caseworkers. Department policy requires an eligibility interview before a client can be approved for FAP benefits. Department of Health and Human Services Bridges Administrative Manual (BAM) 115 (January 1, 2018), p 18. No evidence was offered that eligibility interviews did not take place in this case.

Respondent credibly testified that the father of her child was in the home no more than 2 days in a two-week period. Respondent credibly testified that she believed the information she reported on her applications for assistance to be truthful. Respondent credibly testified that she relied on her caseworker to accurately determine her eligibility for FAP benefits.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that Respondent intentionally reported the father of her child as being absent from the home. Despite the fact that the presence of the father in the home fits the definition of BEM 212 for "living with," the record evidence does not support a finding that Respondent was familiar with this policy or that she intentionally

reported the father of her child as being absent for the purposes of becoming eligible for FAP benefits that she would not have been eligible for otherwise.

The Department has not established an Intentional Program Violation (IPV).

However, the Department has established an overissuance of FAP benefits that must be recouped. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1. Although Respondent mistakenly reported that the father of child was not living in her home, she is not excused from repaying the overissuance of FAP benefits she received. An intentional program violation requires that the Department present clear and convincing evidence showing an intent to present incomplete or inaccurate information needed to make a correct eligibility determination. In this case, the evidence does not establish Respondent's intent to fraudulently obtain FAP benefits but does establish that she received an overissuance of benefits based on client error.

### **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 Food Assistance Program (FAP) benefits based on client error in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that the disqualification of Respondent from the Food Assistance Program (FAP) is not upheld.

KS/nr

  
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Kevin Scully  
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]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]