



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 26, 2018  
MAHS Docket No.: 17-013536  
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 April 23, 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 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 August 31, 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 October 18, 2012, Respondent reported that he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in his 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 FAP benefits outside of the State of Michigan beginning on November 17, 2012.
8. The OIG indicates that the time period they are considering the fraud period is January 2013 through June 2013 (fraud period).
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 \$ [REDACTED] of food stamp benefits from the State of Maryland.
11. No evidence was presented that Respondent had committed a previous 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:

- 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 because he received FAP benefits from the State of Michigan at the same time he received food stamp benefits from the State of Maryland. Food stamp benefits are the equivalent of FAP benefits in the State of Maryland. A person cannot receive FAP in more than one state for any month. BEM 222 (June 2011), p. 2. A person commits an IPV if he is found by administrative hearing process to have made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2012), p. 1.

The Department also alleges that Respondent committed an IPV by failing to report a change in his residency. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2012), 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 (April 2012), p. 2.

In support of its IPV allegations, the Department presented (i) a FAP application submitted by Respondent to the Department on October 18, 2012, in which he provided a Michigan address as his home address and acknowledged his responsibility to update the Department with a change in residency (Exhibit A, pp. 13-32); (ii) an email communication from the Department of Human Resources Family Investment Administration for the State of Maryland indicating that the Respondent received food stamp benefits in Maryland from January 2013 through December 2013 (Exhibit A, pp. 37-67); (iii) an IG-311 Electronic Benefit Transfer (EBT) History showing that Respondent used his Michigan food benefits in Maryland from November 17, 2012, through June 2, 2013 (Exhibit A, pp. 33-34); and (iv) a Benefit Summary Inquiry showing Michigan FAP benefits issued to Respondent from December 2012 through June 2013 (Exhibit A, pp. 68-69).

The evidence presented establishes that Respondent applied for Michigan-issued FAP benefits on October 18, 2012, with an intent to remain in Michigan yet left Michigan 30 days later, then applied and began receiving food stamps benefits in Maryland beginning January 2013. The Department did not present any evidence of fraudulent

communications, applications, or other representations during the fraud period made to Michigan or to Maryland about his residency. Respondent's Maryland application says he was living in Maryland, and his EBT history from Michigan reflects the same. His Michigan application says he was living in Michigan, and his EBT history for the period just after application reflects the same. Respondent must have made a fraudulent statement or representation regarding his 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. Neither of his statements to either state is fraudulent. In addition, his intent to remain a Michigan resident as of October 2012 is irrelevant because Michigan still issues FAP benefits to individuals who do not intend to remain in Michigan permanently. BEM 220, 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 Maryland as shown by his Maryland application, receipt of Maryland food stamp benefits, and EBT spending history. The length of time that Respondent received concurrent benefits in addition to the length of time for which he used his Michigan-issued FAP benefits in Maryland is sufficient to establish Respondent's intentional decision not to inform the Department of his move. Considering all of the evidence together, Respondent failed to update his address with the Department as required so that he 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 his 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 FAP benefits from Michigan and Maryland. However, the Department established that Respondent committed an IPV by failing to report a change in his residence. No evidence was presented that Respondent previously committed an IPV. Accordingly, he 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 January 2013 through June 2013. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period that he received food assistance benefits issued by the State of Maryland. BEM 222, p. 3. Likewise, Respondent was eligible for food assistance benefits from the State of Michigan only if he 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 after consideration of a June 2013 supplemental payment. (Exhibit A, pp. 68-69). All benefits issued during this period were issued while Respondent was residing in Maryland and receiving Maryland food stamp benefits.

After a review of the evidence, the Department is entitled to recoup and/or collect the requested OI of FAP benefits in the amount of \$ [REDACTED] from Respondent for overissued FAP benefits from January 2013 and June 2013. Since the Department did not request the OI for the FAP supplement issued in June 2013, the Department cannot recoup/collect the value of the supplement (\$ [REDACTED]).

### 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 be disqualified from the FAP for **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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