



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 26, 2018  
MAHS Docket No.: 17-013581  
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 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 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 September 6, 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 application for benefits as well as report changes in circumstances to the Department.
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 July 2017 through September 2017 (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 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 failed to report changes in her circumstances including her incarceration and second felony drug conviction occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2016), p. 9. Clients must report changes in circumstance to the Department within 10 days of the change itself. BAM 105, p. 12. People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (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).

In this case, Respondent submitted an application to the Department on March 21, 2017, admitting that she had one felony drug conviction. The first drug-related felony conviction was from the 40<sup>th</sup> Circuit Court on September 17, 2012, for Controlled Substance Possession of a schedule 1 or schedule 2 narcotic or drug of less than 25 grams. After submission of her application, Respondent was incarcerated on [REDACTED] pending the outcome of a second case. On [REDACTED], in the 40<sup>th</sup> Circuit Court, Respondent pled guilty to Controlled Substance Possession of a schedule 1 or schedule 2 narcotic or drug of less than 25 grams. As a result of that plea, Respondent was sentenced to 270 days of jail with a credit for time served of 62 days and incurred her second drug-related felony conviction.

Respondent truthfully identified her first drug-related felony conviction. She did not incur or become aware of the second conviction until three months after application. In addition, she did not submit any documentation to the Department such as a Redetermination, Semi-Annual Contact Report, or other Application wherein she misrepresented her circumstances. Therefore, there is no IPV related to any misrepresentations by the Respondent.

Turning to Respondent's failure to inform the Department of her incarceration or second felony drug conviction, Respondent was incarcerated facing new criminal charges. While individuals are incarcerated, resources for communication purposes are limited. In addition, committing an IPV requires an intent to defraud the Department. Given the circumstances Respondent was experiencing, the evidence presented does not establish that Respondent had an intent to defraud the Department.

Under these circumstances, the Department has not 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has **not** satisfied its burden of showing that Respondent committed an IPV. Therefore, she is **not** subject to a period of 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 July 2017 through September 2017. A review of the Respondent's Benefit Summary Inquiry presented by the Department supports benefits issued in the amount alleged. (Exhibit A, p. 46).

A person is a resident of an institution when the institution provides the majority of her meals as part of its normal services. BEM 212 (January 2017), p. 8. Jail, prison, juvenile detention and secure short-term detention are included in the definition of an institution. BEM 265 (July 2015), p. 1. Residents of institutions are not eligible for FAP benefits unless one of the following is true: the facility is authorized by the Food and Consumer Service to accept FAP benefits, the facility is an eligible group living facility, or the facility is a medical hospital and there is a plan for the person's return home. BEM 212, p. 8.

Respondent was incarcerated from [REDACTED], through at least [REDACTED]. There was no evidence that the location where she was institutionalized fell within any of the qualifying conditions set forth in policy. BEM 212, p. 8. According to the application for benefits, Respondent was the only member of her FAP group and was incarcerated during at least the first month of the alleged fraud period; therefore, she was not eligible for any of the benefits issued to her during the period of incarceration.

In addition, as discussed above, Respondent was subject to a permanent disqualification for FAP benefits as soon as she incurred the second drug-related felony conviction. Therefore, Respondent was ineligible for benefits from June 26, 2017, through the end of the fraud period.

As a result of Respondent's incarceration and her two drug-related felony convictions, Respondent was ineligible for FAP benefits. The Department is entitled to recoup \$ [REDACTED] from Respondent, which is the difference between the amount of FAP benefits actually issued to her and the amount she was eligible to receive during the fraud period.

### **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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

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 **not** subject to a period of disqualification from the FAP.



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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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