



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 12, 2018  
MAHS Docket No.: 17-016784  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 9, 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 (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 Food Assistance (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 December 8, 2018, 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 Food Assistance benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in circumstance such as change of residence and to provide accurate and honest information to the Department when completing applications.
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 periods are [REDACTED]; [REDACTED] \$ [REDACTED] from 1 [REDACTED]; [REDACTED] and [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$5,583.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 **third** 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 Services 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 2017), pp. 12-13.

### **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), p. October 2016; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 seeks and Intentional Program Violation alleging when Respondent applied for FAP benefits in the State of Michigan on several occasions she was already receiving FAP benefits in another state and did not report the receipt of out of state benefits.

In support of its contention that Respondent committed an IPV, the Department presented the following evidence. The Respondent applied for Michigan FAP benefits on July 23, 2012 and October 13, 2013, and was asked in both applications, "Are you getting Food Share or Food Stamps this month?" In response to the question, Respondent answered "No" which was untrue as she was receiving FAP in the state of Tennessee at the time of the applications. Exhibit A, pps. 14 and 46. Correspondence solicited by the Michigan Office of Inspector General from the State of Tennessee confirmed that the Respondent received FAP in Tennessee from January 2012 through July 31 2012, and February 12, 2013 through February 28, 2014. Exhibit A, p. 143. Thus, as can be seen, the Respondent was receiving both Michigan and Tennessee benefits at the time of the Michigan applications.

In addition, a review of the Respondent's IG 311, EBT card usage shows that the Respondent's Michigan FAP benefits were used consistently out of state in the states of Tennessee and Missouri. Exhibit A pps. 150-163. In an application filed in Michigan on October 20, 2015, the Respondent was receiving FAP benefits in the state of Missouri while applying for FAP in Michigan. Exhibit A, p. 116. The Respondent again when asked whether she was getting food assistance this month? answered "No". In addition, correspondence from Missouri indicated that she received FAP benefits from Missouri from November 14, 2014 through March 20, 2016. Exhibit A, p. 147. From March 20, 2014 thereafter, through November 16, 2015 Respondent consistently used her Michigan FAP benefits in the state of Missouri.

In addition, the Department provided Benefit Issuance Summaries demonstrating that the Respondent received Michigan benefits throughout the period she was receiving benefits from Michigan.

Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Missouri or the State

of Tennessee BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits during the fraud periods from the State of Missouri and during the same period she was also receiving FAP benefits from the State of Michigan. In addition, the Respondent used her Michigan FAP benefits out of state for more than thirty days and was no longer eligible on that basis as well to continue to receive Michigan FAP benefits. The evidence presented clearly established that the Respondent intentionally misrepresented that she was not receiving FAP in other states in the several Michigan FAP applications so that she could also receive FAP benefits from Michigan as well benefits from other states. The Department has established by clear and convincing evidence that the Respondent intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1

### **Disqualification**

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has established an IPV by clear and convincing evidence regarding her FAP benefits in order to receive dual benefits from Michigan and Missouri and Tennessee.

The standard disqualification period is used in all instances except when a **court** orders a different period; see Non-Standard Disqualification Periods in this item.

Apply the following disqualification periods to recipients determined to have committed an IPV:

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV. BAM 720 (October 2017) p.

16.

The Department has requested that Respondent be disqualified from receiving FAP benefits for the rest of her life, a lifetime disqualification. In support of its request the Department presented an IPV Sanction Summary that demonstrated that at the time of the hearing the Respondent had two prior IPV's imposed, one on June 1, 2012 (first) and another IPV imposed on June 1, 2016. Exhibit A, p. 170. Because the Respondent

has again been found to have committed an IPV, the Department is entitled to a finding of a third sanction and the imposition of a lifetime disqualification.

### 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 an overissuance of [REDACTED] during the Multiple fraud periods set forth in Paragraph 6 of the Findings of Fact and Exhibit A, p. 4. The Department presented evidence at the hearing that confirmed that the OI start dates for the multiple periods in questions were correct.

Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Tennessee or Missouri. BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits during the fraud periods, when she was receiving dual benefits from two states and was not eligible to received Michigan FAP benefits.

The FAP benefit issuance summaries presented by the Department showed that during the fraud periods Respondent received [REDACTED] in FAP benefits from Michigan. Exhibit A, pp. 164-170. Based upon a review of the Benefit Issuance Summaries it is determined that they do support a FAP OI for the fraud periods. Because Respondent was not eligible for concurrent receipt of benefits from two states, she was not eligible for any of the Michigan issued FAP benefits issued during the fraud period. Therefore, it is determined that the Department is entitled to recoup/collect an OI of [REDACTED] from Respondent for overissued FAP benefits 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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Food Assistance.

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 receiving Food Assistance benefits for a period of **lifetime**.

LF/tm



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**Lynn M. Ferris**

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] [REDACTED]  
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