



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: April 12, 2018  
MAHS Docket No.: 18-000442  
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 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 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 January 4, 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 FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in his circumstances as well as not to buy, sell, trade, exchange, or otherwise traffic his FAP 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 2015 through December 2015 (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 (October 2017), 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 is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 2.

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). An IPV also is defined as committing any act which is a violation of Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards. 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 the Respondent committed an IPV of his FAP benefits by allowing unauthorized use of his FAP benefits while he was incarcerated. An incarcerated individual is not eligible for Family Independence Program (FIP), State Disability Assistance (SDA), or FAP benefits. BAM 804 (May 2012), p. 1. An Authorized Representative who has access to a group's FAP benefits must be designated in writing by the client, via an Assistance Application, and/or a Request for Food Stamp Authorized Representative form. BAM 110 (January 2013), p. 10.

In support of its case, the Department presented (i) an application for benefits submitted by Respondent on January 15, 2013, with no other household or group members listed; (ii) a Wayne County Sheriff Book Card showing Respondent as having been booked on September 11, 2015; (iii) a Michigan Department of Corrections website screenshot showing that Respondent's earliest release date is August 12, 2030; (iv) two EPPIC screen shots showing that Respondent did not have an Authorized Representative on his account and his card was not reported lost or stolen during the relevant period; (v) a Benefit Summary Inquiry showing that Respondent was issued benefits during the fraud period; and (iv) an IG-311 Electronic Benefit Transfer (EBT) History showing use of Respondent's EBT benefits from September 22, 2015, through December 8, 2015, via card swipes and pin entries while Respondent was incarcerated.

The Department's evidence shows that someone was clearly using Respondent's benefits while he was incarcerated despite the fact that Respondent was the only authorized user and member of his FAP group. Since Respondent was incarcerated, he could not use the benefits. Likewise, since Respondent was the only authorized user with the PIN, Respondent must have shared the PIN with someone to allow the other person's use of his benefits while he was incarcerated. These acts constitute a transfer of FAP benefits in violation of federal regulations. 7 CFR 273(e)(6). Based upon the totality of the circumstances, the Department has met its burden of proof in establishing that Respondent has committed an IPV.

**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 FIP, FAP or SDA, 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 established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is subject to a 12-month disqualification from receipt of FAP benefits on the basis of this being his first IPV.

**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. The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8.

As discussed above, an individual is not eligible for benefits while incarcerated. BAM 804, p. 1. Furthermore, when a person is considered to be a resident of an institution when the institution provides the majority of his meals as part of its normal services. BEM 212 (November 2012), p. 6. Jail, prison, juvenile detention and secure short-term detention are included in the definition of an institution. BEM 265 (July 2012), 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 September 11, 2015, and will be incarcerated until at least the year 2030. There was no evidence that the location where he was institutionalized during the relevant period fell within any of the qualifying conditions set forth in policy which would permit use or receipt of FAP benefits. BEM 212, p. 8. The Department presented a FAP purchase history showing that Respondent's benefits were used during the alleged fraud period for transactions totaling \$██████. The Department also presented a Benefit Summary Inquiry showing that Respondent was issued \$██████ in FAP benefits during the fraud period. According to the application and testimony, Respondent was the only member of his FAP group and was incarcerated during the fraud period; therefore, he was not eligible for any of the benefits issued to him during the period of incarceration.

In this case, the Department did not argue that the Respondent was trafficking benefits; therefore, the Department improperly requested the value of the transactions completed during the fraud period as the OI amount. The OI amount should be based upon the value of benefits issued since Respondent was not eligible for any benefits while incarcerated. BAM 720, p. 8. When the calculation of an OI is based upon a change in circumstances, the Department must allow time for the reporting and processing of the changes in order to begin the OI. To determine the first month of the overissuance period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, pp. 4-5.

Since the Department requested recoupment of the value of the trafficked benefits and not the value of the benefits issued after application of the change reporting and processing rules, the Department has met its burden of establishing an OI 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. Respondent **received** an OI of program benefits.
3. The Department **did not satisfy its burden of proof** showing that it had correctly calculated the total OI amount presented and must recalculate the OI for the fraud period.

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

AM/

**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**

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**Respondent**

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