



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 31, 2018  
MAHS Docket No.: 17-015671  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

**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 May 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 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 FAP benefits for ten years?

**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 November 1, 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 FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department within 10 days.
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 April 1, 2017 through May 31, 2017 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████.
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 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 or more, or
  - the total 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.

BAM 720 (January 2016), 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 (January 2016), p. 7; 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 alleges that Respondent committed an IPV of her FAP benefits because he received Michigan-issued FAP benefits at the same time he was issued FAP benefits in Illinois. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (October 2016), p. 3. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on November 6, 2015 in which he acknowledged that he received the Information Booklet advising of "Things You Must Do" (which explained reporting change circumstances, including residency).

The Department presented correspondence from the State of Florida which revealed that Respondent received FAP benefits in Florida for the months of April 2017 and May 2017. The Department further presented a benefit issuance summary relating to Respondent's Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits from April 1, 2017 through May 31, 2017.

Respondent knew or should have known that he was not entitled to receive FAP benefits from more than one state especially given that this information is provided at the time of application. Respondent did not apply for FAP benefits in Florida until April 24, 2017. By that date, his Michigan benefits had already been issued. Respondent did not know at the time of application that his FAP application in Florida would be approved. It appears that Respondent did not receive his April and May 2017 Florida FAP benefits until May 3, 2017. Respondent did not receive Michigan FAP benefits after May 31, 2017.

Respondent did not begin using his FAP benefits in Florida until April 6, 2017, presumably when he decided to remain in Florida. While it is true that Respondent began using his FAP benefits out of state in Illinois on December 7, 2016, Respondent clearly did not intend to remain in Illinois and thus it is found that he had not relocated to Illinois.

On April 24, 2017, Respondent submitted a Florida application for FAP benefits. In the April 24, 2017 Florida application, Respondent indicated that he had not received benefits in another state. This information was clearly untrue as Michigan issued FAP benefits to Respondent on April 5, 2017. There was no evidence that Respondent reported his relocation or requested that his Michigan FAP benefits close. As such, Respondent was aware that he would be issued Michigan FAP benefits on May 5, 2017. The Michigan FAP benefits were subsequently issued on May 5, 2017. Accordingly, because Respondent was untruthful in submitting his Florida application and because

the Department has established the Respondent received benefits from two states in the same month, it has established that Respondent committed an IPV.

### **Disqualification**

The Department contended a ten-year disqualification was justified. The contention was based solely on Respondent's receipt of FAP benefits from multiple states. A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720 (October 2015), p. 15. Clients are disqualified for ten 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.

For a ten-year disqualification, the Department must establish that Respondent purposely misrepresented residency (or identity). The Department did not allege that Respondent misreported Michigan residency. When Respondent submitted the Florida application using a Florida address, he was residing in Florida. Therefore, it is found that Respondent did not misrepresent his residency or identity and thus the Department failed to establish a basis for a ten-year disqualification.

Respondent was untruthful on his Florida application as it related to whether he had received benefits from another state. The Department appeared to allege that Respondent only failed to report a change in state of residency. However, as previously stated, it does not appear that Respondent's residency changed until April 6, 2017. For purposes of determining the length of IPV disqualification, a failure to report a change of residency or the receipt of out-of-state FAP benefits does not equate to a fraudulent misrepresentation of residency or identity.

However, because Respondent provided false information when completing his Florida application, he received May 2017 FAP benefits in Michigan for which he was not entitled. Under Department policy, when the Department receives reliable information that a group member has left the state before the next benefit issues, benefits will close immediately. BAM 220 (April 2017). Thus, if Respondent has reported his relocation on April 4, 2017, he would not have received May 2017 benefits. Therefore, it is found the Department has established a basis for a 12-month disqualification. Accordingly, Respondent is subject to a 12-month disqualification under the FAP program.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. At the hearing, the Department established that the State of Michigan issued a total of [REDACTED] in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for [REDACTED] in FAP benefits during this period.

As previously stated, the Department presented evidence from the State of Florida which revealed that Respondent received FAP benefits from for both April 2017 and

May 2017 on May 3, 2017. **Concurrent receipt of benefits** means assistance received from **multiple** programs to cover a person's needs for the same time period. BEM 222 (October 2016), p. 1. Thus, even though the Florida benefits for April 2017 were not received until May 3, 2017, the April 2017 period was covered. Therefore, the Department has established it is entitled to recoup the [REDACTED] in FAP benefits it issued to Respondent 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 FAP benefits in the amount of [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a 12-month disqualification from FAP benefits.

JM/cg



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**Jacquelyn A. McClinton**  
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

**Via Email:**

[REDACTED]

**Respondent – Via First-Class Mail:**

[REDACTED]