



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

██████████  
██████████  
██████████ NY ██████████

Date Mailed: June 12, 2018  
MAHS Docket No.: 17-016901  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**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 June 11, 2018, from Detroit, Michigan. The Department was represented by Brian Siegfried, 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 December 14, 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 report changes in circumstances to the Department; to truthfully and accurately answer questions on the application or redetermination for benefits; and not to receive food assistance benefits in more than one state at any given time.
5. Respondent **has an unknown** physical or mental impairment; this impairment is not significant enough to require Respondent to have an Authorized Representative when filling out forms for the Department; this impairment did not prevent Respondent from completing High School or obtaining a General Education Degree.
6. The Department's OIG indicates that the time periods it is considering the fraud period are January 2016 through May 2016, and July 2017 through October 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 \$0.00 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. During the fraud period, Respondent received food assistance benefits from Alabama in the amount of \$ [REDACTED] in 2016 and \$ [REDACTED] in 2017.
10. This was Respondent's **first** alleged IPV.
11. 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 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 received concurrent benefits in Michigan and Alabama. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. A person commits an IPV if he/she is found by administrative hearing process to have made a fraudulent statement or representation regarding his/her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

To support its allegations, the Department presented evidence of Respondent's Michigan application for benefits dated January 11, 2016, at which time she provided a Michigan mailing address. Respondent left blank the questions related to Michigan residency including whether or not she intended to reside in Michigan. In addition, Respondent submitted a Redetermination to the Department on December 1, 2016, on which she did not report a change from her Michigan address. Respondent also indicated on the Redetermination that she has never received food assistance in another state. On both forms, Respondent failed to inform the Department that she was receiving income in the form of food assistance from the State of Alabama. She also signed and affirmed on each form that the information reported was truthfully and completely answered, and that she understood her responsibilities as a program recipient. As a result of Respondent's Application and Redetermination, she received Michigan-issued FAP benefits from January 2016 through May 2016, and July 2017 through October 2017. During this period, the benefit rate \$ [REDACTED] per month except for the first month which was prorated based upon her application date.

The Department also submitted evidence of Respondent's receipt of benefits in Alabama. During the fraud period, Respondent received food assistance benefits from Alabama in the amount of \$ [REDACTED] in 2016 and \$ [REDACTED] in 2017. Her Michigan IG-311 Electronic Benefit Transfer (EBT) history shows that she was using her Michigan-issued benefits in Alabama from March 19, 2016, through March 29, 2016; January 19, 2017, through March 19, 2017; and then New York and Maryland from April 19, 2017, through November 21, 2017, when her benefits were exhausted. Finally, the Department presented a LexisNexis Report showing Respondent's addresses in Michigan, New York, and Alabama during the fraud period.

The evidence presented shows that Respondent misrepresented her residency to the State of Michigan in order to receive Michigan and Alabama benefits concurrently. After

reviewing the evidence, the Department has met its burden of proof by clear and convincing evidence in establishing that Respondent has committed an IPV through concurrent receipt of benefits.

### **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 established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of FAP benefits from Michigan and Alabama. Accordingly, she is subject to a 10-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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a \$ [REDACTED] overissuance during the fraud period based on Respondent's concurrent receipt of benefits. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she received food assistance benefits issued from the State of Alabama. BEM 222, p. 3. Further, Respondent was eligible for food assistance benefits from the State of Michigan only if she 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 FAP benefits (Exhibit A, pp. 70-73). As discussed above, Respondent received dual benefits from the State of Michigan and State of Alabama between January 2016 and October 2017. Based on her EBT usage history, LexisNexis address history, and receipt of Alabama food benefits, Respondent was not living in Michigan. Respondent was not eligible as a result of concurrent receipt of benefits and a lack of Michigan residency from January 2016 through May 2016 and July 2017 through October 2017. Therefore, she was not eligible for any of the FAP benefits issued during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits between January 2016 through May 2016, and July 2017 through October 2017.

**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 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 be disqualified from FAP for a period of 10 years.



AM/

**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) 763-0155; 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**

Lacey Whitford  
MDHHS-Isabella-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

██████████  
██████████  
██████████ NY ██████████

M Shumaker  
Policy Recoupment  
A Marler  
MAHS