



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] OH [REDACTED]

Date Mailed: June 27, 2018  
MAHS Docket No.: 17-017028  
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 June 20, 2018, from Detroit, Michigan. The Department was represented by Allyson Carneal, 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 27, 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 circumstances, including changes in residency and address, 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 2016 through June 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. 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 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 concerning his FAP benefits because he intentionally failed to update his residency with the Department in order to receive FAP benefits from the State of Michigan while living in Ohio and Kentucky. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2015), p. 3.

To support the allegations of an IPV, the Department presented an application for benefits dated April 14, 2016, on which the Respondent provided a Michigan address, failed to answer the questions about his intent to remain a Michigan resident, and acknowledged his responsibility to update the Department with a new address. The Department also provided an IG-311 Electronic Benefit Transfer (EBT) History covering the period from April 23, 2016, through June 11, 2017. In May and June of 2016, Respondent's EBT use oscillates between Michigan and Ohio. From July 2016 through June 2017, Respondent completed only three transactions in Michigan out of a total 156. The remainder of the 156 transactions were completed in Ohio and Kentucky. Next, the Department provided a Work Number Report showing the Respondent's employment with [REDACTED] (Employer) beginning April 3, 2017, with a first paycheck as of April 20, 2017. Respondent provided Employer with an Ohio address. The Department also provided a Child Support Enforcement State Wage Information Report from Ohio showing Respondent had wages from a business in [REDACTED] Ohio as of the 4<sup>th</sup> quarter of 2016. Finally, the Department provided a May 21, 2017, Redetermination submitted by Respondent to the Department listing a Michigan address and reporting no changes.

In this case, the Department has provided adequate proof that the Respondent moved outside of the State of Michigan. However, The Department must establish that a client intentionally made a misleading statement or withheld facts. 7 CFR 273.16(c)(1). In this case, the length of time during which Petitioner was using his FAP benefits in Ohio and Kentucky, the short period from the time of application to the time of consistent use outside of Michigan, and the failure to report a change in residency on the Redetermination is sufficient evidence of an intentional failure to report a change in circumstances. Therefore, the Department has shown by clear and convincing evidence that Respondent 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 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, he is subject to a one-year 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 2016 through June 2017, and that due to his change in residency outside of Michigan, he was ineligible for any FAP benefits during this period. A review of the Respondent's IG-150 FAP Benefit Issuance Summary presented by the Department supports benefits issued in the amount alleged. (Exhibit A, p. 50.) As discussed above, Respondent was ineligible for FAP benefits while living outside of Michigan.

To determine the first month of the OI 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, p. 5. The Department testified that it began the OI after application of the 10-day reporting, 10-day full standard of promptness, and 12-day negative action suspense period to the first day of use outside of Michigan. Petitioner's use of EBT benefits in Michigan and Ohio alternates for April, May, and June. As a result, the Department has not established that Respondent lost his residency as of the first date of EBT use outside of Michigan. In fact, even after the first use in Ohio, Respondent used his FAP benefits in Michigan on eight additional occasions. In addition, each of the addresses for retailers where Petitioner used his FAP benefits are in [REDACTED] Michigan or [REDACTED] Ohio. These cities are on the border or close to the border of both states, meaning Respondent could still be a Michigan resident while using his benefits in Ohio. Therefore, relying on Respondent's first EBT use outside of Michigan is an inadequate method of determining when Respondent's residency changed. If he was still a resident of Michigan, he was still entitled to benefits.

Given Respondent's EBT use between Michigan and Ohio, additional evidence beyond first EBT use outside of Michigan is necessary. In reviewing Respondent's EBT history, the first 30-day period of EBT use outside of Michigan took place between June 12, 2016, and July 12, 2016. As discussed above, any FAP recipient who is absent from the state for more than 30 days is no longer considered a Michigan resident nor eligible for FAP benefits. BEM 212, p. 3. Therefore, according to policy Respondent was no longer a Michigan resident as of June 12, 2016. Based upon this date, the 10-day reporting, 10-day standard of promptness, and 12-day negative action period are applied to arrive at an OI beginning date of August 1, 2016. Therefore, the alleged OI of \$ [REDACTED] for July 2016 is removed from the total OI. The adjusted total OI for the period from July 2016 through June 2017 is \$ [REDACTED]

### 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 reduce the OI and 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 **12 months**.



AMTM/

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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) 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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

Pam Farnsworth  
MDHHS-Monroe-Hearings

**Respondent**

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Policy Recoupment  
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