



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: June 4, 2018  
MAHS Docket No.: 17-016581  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

**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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on May 31, 2018, from Lansing, Michigan. The Department was represented by Stephanie Avery, Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and represented herself.

**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 FAP benefits?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On October 29, 2014, Respondent applied for assistance, including FAP benefits.
2. In the application Respondent completed on October 29, 2014, Respondent reported that she did not have any income; the Department advised Respondent to report changes to the Department within 10 days, including changes in income and employment.

3. On October 29, 2014, the Department conducted a phone interview with Respondent, and Respondent advised the Department that she was on an unpaid leave of absence and she was scheduled for spinal surgery on November 13, 2014.
4. The Department approved Respondent for FAP benefits based on the information she provided to the Department in her application and through her interview.
5. On October 29, 2014, Respondent's employer, [REDACTED], paid Respondent \$ [REDACTED] for 80 hours of work.
6. In November of 2014, Respondent underwent spinal surgery. Respondent was hospitalized for less than one week and then spent the following 30-60 days recovering.
7. Respondent otherwise did not have any physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.
8. Respondent continued to receive pay from her employer through April 14, 2015.
9. Respondent did not report to the Department that she was receiving pay from her employer.
10. The Department initiated an investigation of Respondent's income and determined that Respondent had unreported income.
11. The Department determined that Respondent was issued \$ [REDACTED] in FAP benefits from October of 2014 through April of 2015, and she was not entitled to receive any FAP benefits because she had unreported income.
12. On November 21, 2017, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
13. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), 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.

### **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 720 (October 1, 2014), p. 1.

The Department's OIG requests IPV hearings for the following cases:

- 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 OI 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, p. 12-13

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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of receiving the first payment reflecting the change. BAM 105 (October 1, 2014), p. 9-10. The Department established that Respondent was clearly and correctly instructed to report changes to the Department within 10 days. The Department established that Respondent failed to report her change in income to the Department within 10 days after she started receiving employment income in October of 2014. Respondent's failure to report her change in income to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report her change in circumstances to the Department and that reporting her change to the Department would have caused a reduction in her FAP benefits.

The Department also established that Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement. On October 29, 2014, Respondent completed an application for assistance and participated in an interview with the Department. Although Respondent was suffering from an ailment and was scheduled for surgery, Respondent's ailment did not limit her understanding of her responsibility to report changes in circumstances. Respondent's ailment and her surgery did not limit her ability to report either because Respondent was required to report her income to the Department before the date of her surgery since she was required to report within 10 days and her surgery was scheduled more than 10 days after October 29, 2014.

### **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. 15-16. Clients are disqualified for ten 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.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

**Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 1, 2014), p. 1. In this case, the Department established that Respondent received more FAP benefits than she was entitled to receive. The Department issued Respondent \$ [REDACTED] in FAP benefits when Respondent was actually only entitled to receive \$ [REDACTED]. Thus, Respondent received an overissuance of \$ [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 did receive an OI of FAP benefits in the amount of \$ [REDACTED].

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of 12 months.

JK/nr



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Jeffrey Kemm  
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**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

Oakland 3 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Randa Chenault  
25620 W. 8 Mile Rd  
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**Respondent**

