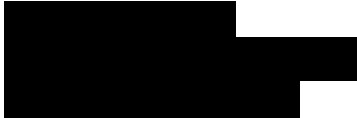




RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: June 20, 2018  
MAHS Docket No.: 18-000484  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**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 Regulations, particularly 7 CFR 273.16. After due notice, a telephone hearing was held on June 19, 2018, from Lansing, Michigan. The Department was represented by Amy Harrison, Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

**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 August 24, 2015, Respondent applied for assistance from the Department, including FAP benefits.

2. In the application Respondent submitted on August 24, 2015, the Department instructed Respondent to report changes which could affect her eligibility for benefits to the Department within 10 days of the date of the change.
3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.
4. On February 7, 2017, Respondent applied for food assistance benefits from the State of Texas. Respondent reported to Texas that she had an address within Texas.
5. On February 9, 2017, Respondent began using her Michigan-issued FAP benefits exclusively in Texas.
6. Respondent did not report to the Department that she had moved to Texas.
7. Texas issued Respondent food assistance benefits for February, May, June, and July of 2017.
8. The Department issued Respondent FAP benefits from February through July 2017.
9. Respondent did not report to the Department that she received food assistance benefits from Texas.
10. The Department conducted an investigation of Respondent's case and discovered that Respondent moved out of state and failed to report her move to the Department. The Department determined that Respondent received benefits from the Department and Texas for the month of February 2017. The Department determined that it overissued Respondent \$ [REDACTED] in FAP benefits from April through July 2017.
11. On January 9, 2018, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
12. The OIG requested Respondent be disqualified from receiving program benefits for 10 years for an IPV involving the concurrent receipt of benefits.
13. A notice of hearing was mailed to Respondent at her last known address and it was 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), 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.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 1, 2016), p. 1. In this case, Respondent received more benefits than she was entitled to receive. Only a resident of Michigan is eligible for FAP benefits issued by the Department. BEM 220 (January 1, 2016), p. 1. Respondent was not a Michigan resident beginning February 2017 because she was living in Texas. Respondent should have reported her move to the Department, but she failed to do so. As a result, the Department continued to issue Respondent FAP benefits beyond the date it would have if she would have reported as required. Thus, Respondent was not entitled to the FAP benefits the Department issued her from April 2017 through July 2017. Therefore, the \$ [REDACTED] in FAP benefits issued to Respondent from April 2017 through July 2017 was an overissuance.

Further, Respondent received FAP benefits from the Department and Texas concurrently. Pursuant to 7 CFR 273.3(a), an individual cannot receive benefits from more than one state concurrently. Thus, Respondent was not eligible for any benefits from the Department while she was receiving benefits from Texas.

### **Intentional Program Violation**

An IPV involving the concurrent receipt of benefits exists when the client made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 1, 2015), 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 (January 1, 2016), 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. Only a Michigan resident is eligible for Michigan issued FAP benefits. BEM 220, p. 1. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (October 1, 2016), p. 11. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent claimed and received benefits from the State of Texas in February 2017

while she was receiving FAP benefits from the Department. Respondent failed to report either that she had changed her address or that she was receiving benefits from Texas. Respondent's failure to report this change 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 the change to the Department and that reporting it to the Department would have caused the Department to stop issuing her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

### **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. 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, Respondent committed an IPV involving the concurrent receipt of benefits because Respondent claimed and received FAP benefits from the Department and the State of Texas concurrently. Therefore, Respondent is subject to a ten-year disqualification for an IPV involving the concurrent receipt of benefits.

### **DECISION AND ORDER**

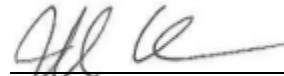
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$ [REDACTED] that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits.

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 10 years.

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

**DHHS**

Barbara Hamilton  
1040 South Winter Street  
Ste. 3013  
Adrian, MI  
49221

Lenawee County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

**Respondent**

