



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: June 20, 2018  
MAHS Docket No.: 18-001687  
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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (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 July 1, 2016, Respondent applied for assistance from the Department, including FAP benefits.
2. In the application Respondent submitted on July 1, 2016, the Department instructed Respondent to report changes which could affect his eligibility for assistance 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 his understanding or ability to fulfill his reporting requirement.
4. The Department granted Respondent's request for assistance and started issuing FAP benefits to him in July 2016.
5. On November 29, 2016, Respondent applied for food assistance benefits in Florida.
6. Respondent did not report to the Department that he had moved to Florida.
7. Florida granted Respondent's request for assistance and issued food assistance benefits to Respondent from March through June 2017.
8. Respondent did not report to the Department that he was receiving food assistance benefits from Florida.
9. The Department conducted an investigation of Respondent's case and discovered that Respondent moved out of state and failed to report his move to the Department. The Department determined that Respondent received benefits from the Department and Florida from March through June 2017.
10. On February 22, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
11. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV (even though the IPV involves the concurrent receipt of benefits and Respondent could be subject to a ten-year disqualification).
12. A notice of hearing was mailed to Respondent at his last known address and it 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), 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**

Respondent received an overissuance because he received more benefits than he 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 November 2016 because he was living in Florida. Respondent did not report that he had moved, so the Department continued to issue FAP benefits to Respondent while he was living in Florida. Thus, Respondent received an overissuance. The issue here is whether the overissuance was due to an intentional program violation.

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and (2) The client was clearly and correctly instructed regarding his or her reporting responsibilities, and (3) The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (January 1, 2016) 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; 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 his circumstances to the Department within 10 days of the date of the change. BAM 105 (October 1, 2016), p. 11-12. The Department established that Respondent was clearly and correctly instructed to report changes to the Department within 10 days. Respondent claimed and received benefits from the State of Florida from March through June 2017 while he was receiving FAP benefits from the Department. Respondent failed to report either that he had changed his address or that he was receiving benefits from Florida. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the change to the Department and that reporting it to the Department would have caused the Department to stop issuing his FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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. In general, clients are disqualified 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. 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 is subject to a disqualification because he committed an IPV. The maximum disqualification that could be imposed on Respondent is ten years because his IPV involves the concurrent receipt of benefits. However, the Department is only seeking a one-year disqualification for a first IPV. Therefore, Respondent will only be subject to a one-year disqualification.

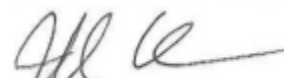
## **DECISION AND ORDER**

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 should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall be disqualified from FAP benefits for a period of one year.

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**

[REDACTED]