



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: June 11, 2018  
MAHS Docket No.: 18-002517  
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 June 7, 2018, from Lansing, Michigan. The Department was represented by Valerie Lancour, 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 November 27, 2016, Respondent applied for assistance from the Department, including FAP benefits.
2. In the application Respondent submitted on November 27, 2016, the Department asked Respondent to list the real property he owned, and Respondent listed one parcel – [REDACTED]

3. Respondent signed the application and affirmed that he provided complete information to the Department.
4. Respondent did not have any apparent physical or mental impairment which would have limited his understanding or ability to fulfill his responsibilities the Department.
5. When Respondent submitted his application, Respondent owned two parcels of real property – [REDACTED] and [REDACTED]
6. The real property known as [REDACTED] had a value of \$ [REDACTED]
7. The real property known as [REDACTED] had a value of \$ [REDACTED]
8. The two parcels are not contiguous.
9. The Department approved Respondent for FAP benefits based on the information he provided in his application.
10. The Department paid Respondent \$ [REDACTED] in FAP benefits from November 2016 through April 2017.
11. On April 11, 2017, Respondent applied for State Emergency Relief.
12. When the Department received Respondent's application, the Department performed an asset verification and discovered that Respondent owned two parcels of real property.
13. The Department then reviewed Respondent's case and determined that he failed to properly report that he owned two parcels of real estate when he applied for FAP benefits.
14. The Department determined it overissued \$ [REDACTED] in FAP benefits to Respondent from November 2016 through April 2017 because Respondent had unreported assets which exceeded the asset limit.
15. On May 7, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
16. 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.
17. 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**

Respondent received an overissuance of FAP benefits because the Department issued FAP benefits to Respondent when Respondent's countable assets exceeded the asset limit to be eligible for FAP benefits. Countable assets cannot exceed the asset limit for eligibility. BEM 400 (July 7, 2016), p. 1. The asset limit for FAP benefits is \$5,000. BEM 400, p. 5. Only one homestead is excluded from countable assets. BEM, p. 33. Since Respondent owned two parcels of real property and since both had values exceeding the asset limit of \$5,000, Respondent's countable assets exceeded the asset limit even with the exclusion of one of the parcels. Thus, since Respondent's assets exceeded the asset limit, Respondent was not eligible for the FAP benefits he was issued. Therefore, 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 cooperate with the Department and provide complete and truthful answers on his

application. BAM 105 (October 1, 2016), p. 9. The Department clearly and correctly instructed Respondent of his responsibility to provide complete and truthful answers. Respondent failed to provide complete and truthful answers when he withheld information about his ownership of a parcel of real property. Respondent's failure to provide information about his ownership of the parcel must be considered an intentional misrepresentation to obtain FAP benefits since Respondent knew or should have known that he was required to provide complete information about all the parcels he owned and that reporting that he owned more than one parcel would have caused the Department to deny him FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.

### **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. 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.

### **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.

IT IS 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

**DHHS**

Andrea Stevenson (Chippewa DHHS)  
463 East 3 Mile Rd.  
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49783

Chippewa County DHHS- via electronic  
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MDHHS- Recoupment- via electronic mail

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**Petitioner**

OIG  
PO Box 30062  
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48909-7562

**Respondent**

