



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: June 22, 2018  
MAHS Docket No.: 18-000670  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 18, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for Food Assistance (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 OIG filed a hearing request on January 24, 2018, to establish an IPV and disqualification from receipt of FAP benefits. The Department advised the

undersigned during the hearing that the Department has established the overissuance and the debt has been established.

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 employment and income from employment and to provide timely, accurate information 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 1, 2017 through December 31, 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 [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in [REDACTED] benefits for purposes of establishing the IPV \$500.00 threshold limit as the Department represented at the hearing that the Debt amount is established.
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 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), 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 (January 2017), p. 12-13.

### **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), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 seeks an Intentional Program Violation (IPV) having represented at the hearing in this case that the Department has established the Debt as alleged in the amount of [REDACTED] and therefore does not require a hearing to establish an overissuance.

The Department seeks an IPV due to the Respondent's failure to report on his redetermination submitted on November 28, 2017 that he was employed and had income. Exhibit A, p. 34. The Respondent reported "No" to the question "Does anyone in your household have income?" The Department presented a verification of employment provided by Respondent's employer [REDACTED] which indicated that he was receiving income at the time he reported no group income on the redetermination. In fact, the verification from the employer demonstrated that at the time of the redetermination, the respondent received 2 pays in the amount of [REDACTED] on November 7, 2017 and [REDACTED] on November 21, 2017, and had been receiving income since May 23, 2017. Exhibit A, pp. 32-33.

The Respondent certified when he signed the redetermination in question that the statements on the form were true and correct to the best of his knowledge and that he examined the redetermination. Exhibit A, p. 26. Prior to the redetermination the Respondent had applied for FAP benefits on January 9, 2017 and indicated he had no income and received a Notice of Case Action dated January 12, 2017 advising him that his FAP benefits were approved on the basis that his FAP benefits were based upon his statement that he had no income at the time of the application and further advised the Respondent that he must report changes in income and employment within 10 days of the change. In addition, with the Notice, the Respondent also received a change report to report changes which again reiterated that changes must be reported. Exhibit A, pp. 21, 26-27. Case Comments by the caseworker assigned to Respondent further reported that during his telephone interview the Respondent denied any employment or income during the redetermination interview. Exhibit A, p.38.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (January 2018), p. 12. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11-12.

In this case the evidence established that the Respondent did not report his income or employment on the November 28, 2017 redetermination and also never reported starting employment within 10 days after being advised he was required to do so. Thus, based upon the withholding of both employment and income information from the Department at the time of the redetermination which clearly would have affected his FAP benefits, the Department has established that Respondent intentionally did so in order to continue to receive FAP benefits and thus has established that Respondent committed an IPV by clear and convincing evidence.

### **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. 16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. 17. 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, the Department has established by clear and convincing evidence that Respondent has committed an IPV and thus is entitled to a finding of disqualification of Respondent from receipt of FAP benefits. Because this was Respondent's first IPV a disqualification period of 12 months is established.

### **Overissuance**

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

In this case the Department is not seeking an overissuance or recoupment as the Department testified that the debt in the amount of [REDACTED] was established by the Department. Because an OI is established to support an IPV only, it is determined that Respondent did receive more benefits than he was entitled to received based upon the failure to report changes in income and employment as required by Department policy, and the \$500 threshold to support and IPV is established.


## **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.

The Department is ORDERED to take appropriate action necessary to disqualify the Respondent from receipt of FAP benefits for a period of **12 months**.

LF/cg



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**Lynn M. Ferris**  
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

**Via Email:**

[REDACTED]

**Respondent – Via First-Class Mail:**

[REDACTED]