



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 27, 2018  
MAHS Docket No.: 18-002481  
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 21, 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 Respondent receive an overissuance (OI) of Food Assistance (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 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's OIG filed a hearing request on March 14, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
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 report income and employment at the time of application and changes in circumstance regarding income and employment with 10 days of receiving pay.
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 periods are April 1, 2014 through February 28, 2015 (1<sup>st</sup> fraud period OI amount [REDACTED]) and March 1, 2016 through June 30, 2016 (2<sup>nd</sup> fraud period OI amount [REDACTED]) (fraud periods).
7. During the 1<sup>st</sup> 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 FAP benefits in the amount of [REDACTED].
9. During the 2<sup>nd</sup> 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.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
11. The Department alleges that the total overissuance for both fraud periods is [REDACTED].
12. This was Respondent's **first** alleged IPV.
13. 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 for Respondent's alleged failure to report income from employment with ██████████ at the time she applied for FAP on March 28, 2014. Exhibit a, p. 15. At the time she applied for benefits Respondent actually received a pay check that day thus Respondent could not claim she was not working. In addition, the Respondent was advised by the information regarding her reporting responsibilities in the application itself regarding employment and income reporting. The employment and pay received at the time of the application was established by the Work Number which indicated that she received ██████████ gross pay on the application date and had been working consistently for a year or more at the time she reported no income or employment. Thereafter the Respondent completed a second application on July 23, 2015 at which time she was not employed. However, the Respondent began working for ██████████ again on January 17, 2016 receiving her first pay on January 22, 2016 and failed to report that she had returned to her employer ██████████. Exhibit A, p. 78. The Work Number also demonstrates the Respondent worked for a year thereafter without reporting her employment.

In both the applications completed by Respondent, she acknowledged her responsibility to report income and employment. The Department also presented evidence regarding Respondent's employer which verified employment. The Department also presented benefit issuance summaries establishing that Respondent received FAP benefits throughout the two fraud periods. Exhibit A, pp. 112-11430.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

In this case the Respondent did not report her employment income at any time. In addition, even though employed at the time of the first application, no evidence was presented that the Respondent ever fulfilled her responsibility to report this employment and the income she received. As Respondent did not attend the hearing and offered no other facts to rebut the Department's evidence it is determined based upon the failure of the Respondent to report employment and income on two occasions the Department has established that Respondent intentionally did not do 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 is Respondent's first IPV a disqualification of 12 months due to IPV of FAP being established is imposed.

### **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.

A client error is present in this situation because Respondent failed to notify the Department of her employment and earned income at the time of application and later failed to report resuming employment to the Department for almost one year. In regard to policy, the evidence established that Respondent did not report the income changes within 10 days of receiving the first payment reflecting the change or at any other time. BAM 105, p. 9. Thus, an OI is present in this case.

Applying the overissuance period standard, it is found that the Department applied the appropriate OI begin date of April 1, 2014 for the first OI period, April 1, 2014 through February 28, 2015 as the employment was established and ongoing at the time of the first application. BAM 715, pp. 4-5 and Exhibit A, p. 77. The second OI period begins March 1, 2016 which begin date is also correct as the Respondent received her first pay on January 22, 2016, and applying the 10/10/12 period the OI period was correctly started as of March 1, 2016 to allow time for reporting, processing and notice requirement. The fraud periods are as stated in the Findings of Facts, paragraph 6.

The Department presented OI budgets that were reviewed for both OI fraud periods and which demonstrated that the Respondent was overissued FAP when the earned income from employment was included in the FAP calculation. Exhibit A, pps. 81-111. Respondent received more FAP benefits than Respondent was entitled to receive because the original FAP benefit amount of was based upon the Respondent reporting no income or employment at the time of application and was not calculated based on the Respondent's earnings from employment. A review of the OI budgets at the hearing and further review by the undersigned found them be correct. The Department also presented a Benefit Issuance Summary Inquiry to establish that Respondent received FAP benefits throughout the OI periods. Exhibit A, p. 112-114. Based upon the evidence presented the Department has established that it is entitled to recoup a total of [REDACTED] for the FAP benefit OI.

### **DECISION AND ORDER**

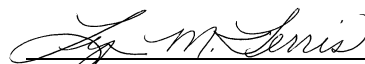
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance 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]