



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: June 22, 2018  
MAHS Docket No.: 17-016785  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

### **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 12, 2018, from Lansing, Michigan. The Department was represented by Allyson Carneal, Regulation Agent of the Office of Inspector General (OIG). Department Exhibit 1, pp. 1-51 was received and admitted.

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 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 benefits for 1 year?

### **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 December 8, 2017, 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 felony drug convictions and that he was a probation absconder and that he was in jail.
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 November 1, 2015, through January 31, 2016; and February 12, 2016, through April 1, 2016 (fraud period).
7. During the fraud period from November 1, 2015, through January 31, 2016, Respondent was issued \$968.20 in FAP benefits by the State of Michigan while he was an absconder from probation, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. During the fraud period from February 12, 2016, through April 28, 2016, Petitioner was in the Van Buren County Jail and his FAP benefits continued to be used.
9. The Department alleges that Respondent received an OI in FAP benefits in the total amount of \$968.20.
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was returned by the United States Postal Services as undeliverable.
12. Respondent was an absconder from probation from October 6, 2015, through January 31, 2016. (Exhibit 1, p.33)
13. Respondent was in the [REDACTED] County Jail from January 31, 2016, through April 28, 2016. (Exhibit 1, pp.35-37)

### **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.

## **PROBATION AND PAROLE VIOLATORS**

### **FAP**

A person is disqualified because of a probation or parole violation if all the following conditions are met:

- MDHHS verifies with law enforcement, the courts or the MDOC that the individual is found to be violating a condition of probation or parole imposed under federal or state law.
- The individual is absconding from supervision; see BPG Glossary for definition of absconding.
- Federal, state, or local law enforcement, or Michigan Department of Corrections authorities are actively seeking the individual to enforce the conditions of the probation or parole.

Actively seeking means one of the following:

- A Federal State, or local law enforcement agency informs MDHHS that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 20 days of submitting a request for information about the individual to MDHHS.
- A Federal, State or local law enforcement agency presents a felony arrest warrant or to arrest an individual for a probation or parole violation within 20 days.
- A Federal, State, or local law enforcement agency states that it intends to arrest an individual for a probation or parole violation within 30 days of the date of a request from MDHHS about a specific probation or parole violation.

If the law enforcement agency indicates it does intend to arrest the individual for the probation or parole violation within 20 days of the contact with MDHHS or 30 days of the date of the MDHHS's request for information, MDHHS will postpone taking any action on the case until the appropriate 20 or 30 day period has expired.

Once the 20 or 30 day period has expired, MDHHS shall verify with the law enforcement agency whether it has attempted to arrest the probation or parole violator. If it has, MDHHS shall take appropriate action to deny an applicant or terminate an individual who has been determined to be a probation or parole violator. If the law enforcement agency has not taken any action within 20 or 30 days, MDHHS will not consider the individual a probation or parole violator.

The person is disqualified as long as the violation occurs and until the Michigan Department of Corrections notifies MDHHS the individual is no longer absconding or until Federal, State or local law enforcement is no longer actively seeking the individual. BEM 203

Effective January 1, 2016, 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 or more, or
  - the total amount is less than \$500, 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 (1/1/16), 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 2015), 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, Respondent failed to disclose that he had absconded from probation on October 6, 2015 through January 31, 2016. (Ex.1, p.33) Failing to disclose that he was an absconder from probation was an intentional program violation. BEM 203 BAM 720

### **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. 1. 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. 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, this was Respondent first instance of an IPV therefore a 1 year disqualification is required.

**Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, Respondent received \$776.00 in FAP benefits and he was entitled to \$0 during the period when he was an absconder from probation. Respondent also used FAP benefits in the amount of \$192.20 during the time period he was incarcerated. Therefore, the total amount of the overissuance is \$968.20.

**DECISION AND ORDER**

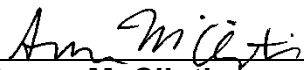
The undersigned Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$968.20.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$968.20 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

AM/bb

  
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**Aaron McClintic**  
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**

Jeannene Gatties  
57150 Cty. Rd. 681  
Hartford, MI 49051

VanBuren County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

[REDACTED]  
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