



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED] AL [REDACTED]

Date Mailed: July 17, 2018  
MAHS Docket No.: 18-000675  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

### **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 July 12, 2018, from Lansing, Michigan. The Department was represented by Tiffany Flagg, Regulation Agent of the Office of Inspector General (OIG).

Respondent (or subject) 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) and Medical Assistance (MA) 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 twelve months?

### **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 January 24, 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 Respondent of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in circumstances.
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 January 22, 2015, through September 30, 2016, for FAP and March 1, 2015, through May 31, 2016, for MA (fraud period).
7. During the fraud period, Respondent was issued \$3,528.00 in in FAP benefits and \$4,187.45 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,528.00.
9. The Department alleges that Respondent received an OI in MA benefits in the amount of \$4,187.00.
10. This was Respondent's first alleged IPV.
11. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

Pertinent Department policy dictates:

To be eligible for FAP or MA in the State of Michigan, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. BEM 220, page 1

For FAP and M

A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely.

A homeless person is an individual who lacks a fixed and regular nighttime dwelling or whose temporary night time dwelling is one of the following:

- Supervised private or public shelter for the homeless.

Exception: For FAP, a client is considered homeless only for the first 90 days.

- Halfway house or similar facility to accommodate persons released from institutions.
- Home of another person.

Exception: For FAP, a client is considered homeless only for the first 90 days.

- Place not designed or ordinarily used as a dwelling (for example, a building entrance or hallway, bus station, park, campsite, vehicle).

Exception: For FAP, a client is considered homeless only for the first 90 days. Lack of a permanent dwelling or fixed mailing address does not affect an individual's state residence status. Assistance cannot be denied solely because the individual has no permanent dwelling or fixed address. BEM 220, page 2

For Medicaid:

A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished.

Example: Individuals who spend the winter months in a warmer climate and return to their home in the spring. They remain MI residents during the winter months.

Example: College students who attend school out of state but return home during semester breaks or for the summer can remain MI residents. (BEM 220, page 2)

Eligible persons may include:

- Persons who entered the state with a job commitment or to seek employment; and
- Students (for FAP only, this includes students living at home during a school break.) BEM 220, pages 1-2

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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, pp 12-13 (1/1/2016).

**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 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 record indicates that the Department is requesting program disqualification and recoupment of benefits, due to Respondent's failure to report change in residency from the State of Michigan to the Department, which resulted in the Respondent receiving an OI of FAP benefits. A review of Respondent's FAP Purchase History showed that all transactions made by her were made in the State of Alabama from April 19, 2015, through October 6, 2016; and July 25, 2017, through September 26, 2017. Respondent's Michigan assistance case was closed in September 30, 2016. Agent Flagg obtained several DHS 1171-Assistance applications dated January 21, 2015; November 20, 2015; and June 20, 2016, indicating that Respondent applied for FAP Benefits with the Department and was informed of his reporting responsibility to the Department and acknowledged his intention to reside in Michigan during the alleged fraud period.

Out of State Verification showed that Respondent never received public assistance in the State of Alabama. Clear Person Locator Report shows that Respondent has a current Alabama address: [REDACTED] AL [REDACTED]. The report also showed that Respondent requested utility installation at the same Alabama address on July 1, 2013, indicating that Respondent had established a residence outside of the State of Michigan during this investigation's alleged fraud period. A Work Number report was completed for client. According to Work Number, Respondent had employment in the State of Alabama. Respondent's start date August 21, 2015. Respondent failed to inform the Department that he was no longer living in Michigan and was living in Alabama and was not eligible for benefits because eligibility could not be established. Also, this failure to report, caused an over issuance in the FAP benefits that he received.

The over-issuance period is January 22, 2015, through September 30, 2016, in the amount of \$3,528.00 for FAP and March 1, 2015, through May 31, 2016, in the amount

of \$4,187.45 for MA; Total benefits issued to Respondent: \$7,715.45. The case is being referred for an Administrative Hearing. A 12-month FAP disqualification is being requested.

The Department established by clear and convincing evidence that Respondent intentionally established residency Alabama. He did not notify the State of Michigan that he had moved and continued to use his State of Michigan FAP and MA benefits in the State of Alabama, when he was not a resident of Michigan. He did sign an application stating that he understood his reporting responsibilities. Respondent withheld or misrepresented information that he was a resident of the State of Michigan, while he was resident of the State of Alabama for the purpose of maintaining FAP and MA benefits. Therefore, the Department has established an IPV.

### **Disqualification**

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p 15. A disqualified Respondent remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 18.

Respondent's signature on the Assistance Application from January 21, 2015; November 20, 2015; and June 20, 2016, certifies that he was aware that fraudulent participation in FAP could result in criminal, civil, or administrative claims. This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed a first IPV of the FAP program, resulting in a one-year disqualification.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

In the above captioned matter, the record evidence shows Respondent intentionally established his residency in the State of Alabama on from January 22, 2015, through September 30, 2016.

**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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an over issuance of FAP benefits in the amount of \$3,528.00.
3. Respondent did receive an over issuance of MA Program Benefits in the amount \$4,187.45.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$7,715.45 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from July 12, 2018, for a period of **12 months**.

LL/bb



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**Landis Lain**

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**

LaClair Winbush  
17455 Grand River Ave  
Detroit, MI 48227

Wayne County (District 31), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] AL [REDACTED]