



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: July 10, 2018  
MAHS Docket No.: 18-000898  
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 July 5, 2018, from Lansing, Michigan. The Department was represented by Jonetta Greene, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] 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 or about June 4, 2016, Respondent's son, [REDACTED] [REDACTED] Jr., moved out of Respondent's household.
2. On June 13, 2016, the Department issued a Redetermination to Respondent to obtain information from Respondent to review her eligibility for FAP benefits.

3. On July 12, 2016, Respondent returned the Redetermination with the requested information. Respondent indicated that she and her son, [REDACTED] [REDACTED] Jr., were the members of her household. Respondent did not indicate that her son had moved out of her household. Respondent signed the form and thereby affirmed that the information she provided was true and complete.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to answer truthfully and completely.
5. The Department issued FAP benefits to Respondent based on a group size of two from July 1, 2016, through July 31, 2017. The Department issued Respondent \$357.00 in FAP benefits each month.
6. Respondent's son, [REDACTED] [REDACTED] Jr., applied for food assistance benefits in Arizona, and Arizona issued him benefits from June 2016 through November 2017.
7. The Department conducted an investigation of Respondent's case and discovered that Respondent did not have a group size of two during the time period the Department issued her FAP benefits based on a group size of two.
8. On February 1, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. The Department requested the establishment of an overissuance of \$2,165.00 for FAP benefits issued from July 2016 through July 2017.
9. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
10. A notice of hearing was mailed to Respondent at her last known address and it was returned by the United States Postal Service 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.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 2015), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent received more benefits than she was entitled to receive. The Department issued FAP benefits to Respondent based on a group size of two when Respondent actually only had a group size of one. This caused Respondent to receive more FAP benefits than she was entitled to receive.

The Department alleged that Respondent received an overissuance of \$2,165.00 for FAP benefits issued from July 2016 through July 2017, but the Department did not present sufficient evidence to establish that Respondent received an overissuance in the amount alleged. The Department's allegation was that Respondent received an overissuance because one group member was erroneously included in the Department's original issuance budget; the Department did not allege that anyone had unreported income. Any income properly budgeted in the original issuance budget remains the same in that month's corrected budget. BAM 720 (January 1, 2016), p. 10. Since the Department did not allege that Respondent's income was incorrectly budgeted, the Department should have used the same income it used in its original issuance budget. However, the Department calculated Respondent's correct issuance for March 2017 based on an income amount greater than the amount used in its original issuance budget. This caused the Department to allege a greater overissuance than what was caused by erroneously including one group member. The overissuance which was caused by erroneously including one group member was only \$2,119.00 for FAP benefits issued from July 2016 through July 2017.

### **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, 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 all forms. BAM 105 (April 1, 2016), p. 9. The Department clearly and correctly instructed Respondent to answer truthfully and completely. Respondent failed to provide complete and truthful answers when she withheld information about her son moving out of her household when she submitted her response to the Department's Redetermination on July 12, 2016. Respondent's failure to disclose that her son had moved out of her household must be considered an intentional misrepresentation to maintain FAP benefits since Respondent knew or should have known that she was required to provide complete information about the members of her household and that reporting that her son had moved out would have caused the Department to reduce her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to answer truthfully and completely.

### **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. Respondent received an overissuance of FAP benefits in the amount of \$2,119.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$2,119.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of one year.

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**

Dora Allen  
14061 Lappin  
Detroit, MI  
48205

Wayne 76 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
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48909-7562

**Respondent**

[REDACTED]  
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