



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED] WV [REDACTED]

Date Mailed: July 16, 2018  
MAHS Docket No.: 18-001490  
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 12, 2018, from Lansing, Michigan. The Department was represented by Daniel Marchetti, 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).

Before the hearing began, the Department requested to withdraw its hearing request regarding medical assistance (MA) because the notice of hearing sent to Respondent was returned as undeliverable. The Department's request was granted, and the hearing proceeded only on the Department's request regarding Food Assistance Program (FAP) benefits.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of 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 March 17, 2016, the Department issued a Notice of Case Action to Respondent which advised him that he had been approved for FAP benefits. The Notice of Case Action instructed Respondent to report changes which could affect his eligibility for assistance to the Department within 10 days of the date of the change. Exhibit A, p. 22.
2. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
3. In April 2016, Respondent began using his FAP benefits almost exclusively in West Virginia. Exhibit A, p. 23-28.
4. In September 2016, Respondent moved to West Virginia. Exhibit A, p. 64.
5. Respondent did not report to the Department that he moved.
6. The Department continued to issue FAP benefits to Respondent after he moved to West Virginia. The Department issued \$194.00 in FAP benefits to Respondent each month from November 2016 through February 2017 for a total amount of \$776.00. Exhibit A, p. 68.
7. On February 1, 2017, Respondent applied for FAP benefits from the Department. Respondent represented that his address was in Michigan. Exhibit A, p. 31.
8. The Department initiated an investigation of Respondent's case and found that Respondent moved out of state and failed to report it to the Department.
9. On February 16, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. A notice of hearing was mailed to Respondent at his last known address and it was returned by the United States Postal Service as undeliverable.
11. The OIG requested recoupment of a \$776.00 overissuance for FAP benefits issued from November 2016 through February 2017, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

## **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), 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 (January 1, 2016), 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 he was entitled to receive. Only a Michigan resident is eligible to receive benefits from the Department. BEM 220 (January 1, 2016), p. 1. Since Respondent was not a Michigan resident when he received FAP benefits from November 2016 through February 2017, Respondent was not entitled to the benefits he received. Thus, the \$776.00 in FAP benefits issued to Respondent from November 2016 through February 2017 was an overissuance.

### **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 (January 1, 2016) 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 report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2016), p. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he moved out of state within 10 days of the date he moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing him FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

Further, Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. The Department clearly and correctly instructed Respondent to provide true and complete information on his application. When Respondent submitted an application on February 1, 2017, Respondent misrepresented that he had a Michigan address. Respondent intentionally misrepresented information to the Department to obtain benefits because he withheld information about his residence in West Virginia when he knew or should have known that the Department would consider the information in determining his eligibility for benefits.

### **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:

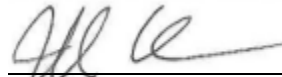
1. Respondent received an overissuance of FAP benefits in the amount of \$776.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.

3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$776.00 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**

Denise McCoggle  
27260 Plymouth Rd  
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48239

Wayne 15 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

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**Petitioner**

OIG  
PO Box 30062  
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48909-7562

**Respondent**

[REDACTED], WV