



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: July 3, 2018  
MAHS Docket No.: 18-001596  
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 3, 2018, from Lansing, Michigan. The Department was represented by Dana Mikko, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared and represented herself.

**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. Respondent applied for assistance from the Department, including FAP benefits. The Department found Respondent eligible and issued FAP benefits to her.
2. On February 9, 2016, the Department issued a Redetermination to Respondent to obtain information from Respondent to review her eligibility for benefits. The Redetermination was repopulated with Respondent's information on file with the Department.

3. Respondent completed the Department's February 9, 2016, Redetermination and returned it to the Department. In the section on income, Respondent listed herself and [REDACTED] [REDACTED] as having income. Respondent wrote "same" in the column labeled "income source." A note was added to these columns in which Respondent's income source was noted as "casino" and [REDACTED] [REDACTED] income source was noted as "water park."
4. On October 2, 2016, [REDACTED] [REDACTED] began working for Tradesmen International. [REDACTED] [REDACTED] was issued his first paycheck on October 7, 2016.
5. Respondent did not report to the Department that [REDACTED] [REDACTED] had started employment.
6. The Department issued FAP benefits to Respondent without taking into account the employment income [REDACTED] [REDACTED] had been receiving.
7. On August 1, 2017, the Department issued a Semi-Annual Contact Report to Respondent to obtain information from Respondent to review her eligibility for benefits. The report was prepopulated with Respondent's information on file with the Department.
8. Respondent completed the Department's August 1, 2017, report and returned it to the Department. In the section on household income, Respondent listed [REDACTED] [REDACTED] [REDACTED] as having income. Respondent listed his employer as Quality Environmental Services, stated he was paid weekly, and wrote "no longer layed off." Respondent intended to write International Tradesman as opposed to Quality Environmental Services; Respondent mistakenly listed the incorrect employer. Respondent was suffering from health issues at the time that she completed the report.
9. The Department continued to issue FAP benefits to Respondent without taking into account the employment income [REDACTED] [REDACTED] had been receiving.
10. On February 20, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
11. The OIG requested 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.

### **Intentional Program Violation**

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, 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 she was entitled to receive. The Department did not take into account income from one of Respondent's group members when the Department calculated the amount of FAP benefits that Respondent was eligible to receive. As a result, the Department found Respondent eligible for more FAP benefits than she was eligible to receive, and the Department issued her more FAP benefits than she was eligible to receive. The issue here is whether the overissuance was due to an 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 not met its burden. The Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. First, the Department did not present sufficient

evidence to establish it clearly and correctly instructed Respondent regarding her reporting responsibilities. The Department did not present a copy of the instructions that Respondent may have received in her application, a redetermination, a notice of case action, a change report, or any other document. Thus, there is insufficient evidence to establish that Respondent was clearly and correctly instructed regarding her reporting responsibilities. Second, the Department did not present sufficient evidence to establish Respondent acted willfully for the purpose of maintaining her FAP benefits. Respondent reported to the Department that [REDACTED] [REDACTED] was working when Respondent returned the Department's August 1, 2017, report. Although Respondent accidentally reported the incorrect employer for [REDACTED] [REDACTED] Respondent made an attempt to report the employment.

### **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, the Department did not establish that Respondent committed an IPV. Thus, Respondent is not subject to a 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. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP benefits.

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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

Shiawassee County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Sharon Reuther  
1720 East Main Street  
Owosso, MI  
48867

**Respondent**

