



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: August 2, 2018  
MAHS Docket No.: 18-002249  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE:** John Markey

**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 26, 2018, from Lansing, Michigan. The Department was represented by Christopher Fechter, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 111 pages of documents were offered and admitted as Department's Exhibit A, pages 1-111.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance (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 ██████████, 2011, Respondent filed with the Department an application for FAP benefits. Exhibit A, pages 12-28.

2. On the [REDACTED], 2011, application, Respondent informed the Department that the only income her household receives is on account of two other group members' RSDI payments. Exhibit A, pages 14, 19-21.
3. On [REDACTED], 2011, Respondent filed with the Department an application for FAP and Medical Assistance benefits. Exhibit A, pages 29-46.
4. On the [REDACTED], 2011, application, Respondent informed the Department that she had no income and was not employed. Exhibit A, pages 40-41.
5. Based on the information Respondent provided in her applications, the Department issued Respondent \$1,365.00 in FAP benefits from July 1, 2011, through November 30, 2011. Exhibit A, page 81.
6. On [REDACTED], 2011, Respondent filed with the Department an application for State Emergency Relief assistance. Exhibit A, pages 64-80.
7. On the [REDACTED], 2011, application, Respondent informed the Department that, on March 30, 2011, she began working a part-time job at Jesters and was as of that time still employed. Exhibit A, page 72.
8. On each of the three applications, Respondent certified that all of her answers were truthful and acknowledged that she could suffer both criminal and civil penalties for intentionally providing dishonest answers. Exhibit A, pages 28, 46, and 80.
9. Based on the inconsistencies in Respondent's applications, the Department began an investigation into Respondent's case.
10. As part of the investigation, a search of the Bridges wage match system was completed, showing that Respondent had wages from Jesters (aka Georges LTD) in each of the last three quarters of 2011 and the first quarter of 2012. Exhibit A, pages 11 and 72.
11. The Department's OIG filed a hearing request on March 9, 2018, to establish an OI of FAP benefits issued to Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, page 1.
12. This is Respondent's first alleged IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, page 1.
13. The OIG considers the fraud period to be July 1, 2011, through November 30, 2011.

14. During the fraud period, Respondent was issued \$1,365.00 in FAP benefits. Exhibit A, page 81.
15. During the fraud period, Respondent was only entitled to FAP benefits of \$589.00. Exhibit A, pages 81-111.
16. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$776.00. Exhibit A, pages 1-3.
17. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
18. 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 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, 2011), p. 1. When a client group receives more benefits than it is 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 determined Respondent's eligibility without budgeting her wages from her employment with Jesters, which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$776.00 of FAP benefits from July 1, 2011, through November 30, 2011.

### **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; (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 his or her reporting responsibilities. BAM 720 (January 1, 2011), page 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, page 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, the Department has met its burden. Respondent was required to accurately and honestly answer all questions on the applications she filed on [REDACTED], 2011, and [REDACTED], 2011. BAM 105, page 9 (June 1, 2011). The Department clearly and correctly informed Respondent on the application that she must honestly answer the questions presented and warned Respondent that failure to do so could result in disqualification and a requirement to repay the benefits improperly received as a result. Respondent certified on each of the applications that her answers were truthful. Further, there is no evidence on the record that Respondent suffers from a physical or mental impairment that would prevent her from understanding or carrying out her responsibilities under the policies.

Despite being adequately informed of her duties, Respondent affirmatively misrepresented her employment status on both applications. Respondent's failure to honestly disclose that she was working at Jesters displays an intent to deceive the Department, as Respondent was informed in the application packet that income could reduce benefits and that she was required to report a change in income soon after it occurred. Given that Respondent repeatedly and consistently lied about her employment status, Respondent's dishonest answers are most appropriately viewed as intentional acts to deceive the Department into believing that she had no income, thus increasing the amount of benefits that could be issued to her. Thus, Respondent committed an IPV.

### **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, pages 12-13. In general, clients are disqualified for standards disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, page 13.

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 from receiving FAP benefits.

**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 and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$776.00 established in this matter, less any amounts already recouped and/or collected.

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



JM/dh

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**John Markey**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

