



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 6, 2018  
MAHS Docket No.: 18-002490  
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 September 5, 2018, from Lansing, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared and represented himself.

**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 December 19, 2016, Respondent was arrested and taken to the Wayne County Jail. Exhibit A, p. 11.
2. At the time that Respondent was arrested, Respondent was receiving FAP benefits from the Department, and Respondent gave his brother permission to use his FAP benefits.

3. Respondent remained incarcerated at the Wayne County Jail until June 15, 2017, when he was released to the Center for Forensic Psychiatry.
4. While Respondent was incarcerated, he was issued \$520.00 in FAP benefits and his FAP benefits were used to complete EBT transactions totaling \$522.40. Exhibit A, p. 13 & 44.
5. Respondent did not report to the Department that he was incarcerated.
6. The Department conducted an investigation of Respondent's case and discovered that he continued to receive FAP benefits while incarcerated.
7. On March 13, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, p. 1.
8. The OIG requested recoupment of a \$520.00 overissuance of FAP benefits for the value of the benefits that were issued to Respondent from January 2017 through April 2017 while he was incarcerated. The OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

### **CONCLUSIONS OF LAW**

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. 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).

#### **Overissuance**

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1.

In this case, Respondent received more FAP benefits than he was entitled to receive. Residents of an institution which provides its residents with the majority of their meals are ineligible for FAP benefits. 7 CFR 273.1(b)(7)(vi). Respondent was a resident of an institution which provided him with the majority of his meals because he was incarcerated in the Wayne County Jail as of December 19, 2016. Respondent was ineligible for benefits while incarcerated. Thus, the Respondent was not entitled to the benefits that were issued to him while he was incarcerated. The Department issued

Respondent \$520.00 in FAP benefits while he was incarcerated, so he was overissued \$520.00 in FAP benefits.

### **Intentional Program Violation**

An intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c). An IPV requires that the Department establish by clear and convincing evidence that the client has either trafficked program benefits or intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 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 alleged that Respondent committed an IPV when he failed to report to the Department that he was incarcerated. Respondent did not have any obligation to report to the Department that he was incarcerated, so his failure to report his incarceration cannot be considered an intentional misrepresentation.

All of the following changes are required to be reported to the Department within 10 days: (a) changes in unearned income of \$100 or more; (b) changes in source of income, including job changes; (c) changes in household composition; (d) changes in residence and resulting changes in shelter costs; (e) acquisition of a non-excludable vehicle; (f) changes in liquid assets such as cash, deposits, and investments; (g) changes in child support obligations; and (h) changes in work hours that cause the individual to work less than an average of 20 hours per week. 7 CFR 273.12(a)(2). No other changes are required to be reported. 7 CFR 273.12(a)(7). Incarceration is not a change that is required to be reported. Although a change in residence is required to be reported, incarceration itself does not change an individual’s residence or shelter expenses, and the Department did not establish that Respondent’s residence or his shelter expenses changed.

The Department also asserted that Respondent acted inappropriately because he let someone use his FAP benefits while he was incarcerated. Respondent admitted to the conduct when he testified that he gave his brother permission to his FAP benefits when he was arrested. Although Respondent let his brother use his FAP benefits while he was incarcerated, Respondent’s conduct did not meet the definition of an IPV. Respondent was free to let others use his FAP benefits for him pursuant to 7 CFR 274.7, and there was no evidence he actually received anything in exchange for his FAP benefits or that he attempted to receive anything in exchange for his FAP benefits.

For these reasons, an IPV has not been established.

**Disqualification**

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, Respondent is not disqualified because he did not commit an IPV.

**DECISION AND ORDER**

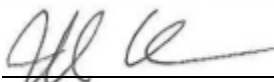
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$520.00 that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$520.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits for an IPV.

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**

Clarence Collins  
12140 Joseph Campau  
Hamtramck, MI  
48212

Wayne 55 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
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**Respondent**

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