



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: August 9, 2018  
MAHS Docket No.: 18-002819  
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 August 7, 2018, from Lansing, Michigan. The Department was represented by Christine Smolinski, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented himself. During the hearing, 44 pages of documents were offered and admitted as Department's Exhibit A, pages 1-44.

**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 ██████████, 2016, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, pages 12-21.

2. On the application, Respondent indicated that he was not employed. Exhibit A, page 14-16.
3. On the application, Respondent acknowledged his duty to report starting employment within 10 days of receiving his first paycheck. Exhibit A, pages 19-20.
4. The application further informed Respondent that if he intentionally failed to report a change in circumstances and received benefits to which he was not entitled, he could be disqualified from the programs and be required to pay back any benefits wrongfully received. Exhibit A, page 20.
5. On or about August 20, 2017, Respondent began working for [REDACTED] and continued to work there through at least December 24, 2017. Exhibit A, pages 41-42.
6. From the time Respondent applied for benefits on August 23, 2016, through the end of December of 2017, Respondent never reported any income to the Department.
7. Based on Respondent's failure to inform the Department of his income, the Department issued Respondent FAP benefits based on an income of zero. Exhibit A, page 43.
8. The Department's OIG filed a hearing request on March 23, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pages 1-2.
9. 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.
10. The OIG considers the fraud period to be October 1, 2017, through December 31, 2017.
11. During the fraud period, Respondent was issued \$576.00 in FAP benefits. Exhibit A, page 43.
12. During the fraud period, Respondent was only entitled to FAP benefits of \$32.00.
13. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$544.00. Exhibit A, page 1-5.
14. Respondent did not have any apparent mental physical impairment that would limit his understanding or ability to fulfill his reporting requirement.

15. 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, 2016), 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 he was entitled to receive. The Department determined Respondent's eligibility without budgeting his wages from his employment with [REDACTED], 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 \$544.00 of FAP benefits from October 1, 2017, through December 31, 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; (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, 2016), 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 report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2016), pages 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he was employed or had any income despite working regularly throughout the entire fraud period and continuing to use his FAP benefits.

Respondent's failure to report this change to the Department, however, is found to be unintentional. During the hearing, Respondent credibly testified that he forgot about the requirement to report the change to the Department, was homeless, and it slipped his mind. Given the circumstances, it is entirely reasonable to believe that Respondent, in fact, committed an unintentional, albeit negligent, mistake of omission as opposed to an intentional action to deprive the Department of information in order to get extra benefits. As Respondent's failure to disclose his employment and income was an error of negligence as opposed to an intentional act, the Department failed to substantiate its IPV allegation.

### **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 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, page 16.

In this case, there was no IPV. Therefore, Respondent is not subject to a 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 \$544.00 that the Department is entitled to recoup and/or collect.
2. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
3. Respondent is not 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 \$544.00 established in this matter, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from receiving FAP benefits as a result of this case.



JM/dh

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**John Markey**  
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**

Ashur Hillman  
220 Fort St.  
Port Huron, MI 48060

St. Clair County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

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