



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] TX [REDACTED]

Date Mailed: August 13, 2018  
MAHS Docket No.: 18-002827  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**HEARING DECISION FOR CONCURRENT BENEFITS**  
**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 Titles 7, 42 and 45 of the Code of Federal Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on August 9, 2018, from Detroit, Michigan. The Department was represented by Jonetta Greene of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

**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 Food Assistance (FAP)?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on August 9, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving FAP program benefits.
3. Respondent was a recipient of Michigan FAP benefits issued by the Department.
4. Respondent was a recipient of Texas FAP benefits.
5. On the Assistance Applications/Mid Certifications and Redetermination signed by Respondent on April 23, 2015; May 3, 2016; and April 7, 2017, Respondent reported no changes and did not disclose that she resided in Texas and that she was also received FAP benefits from Texas at the time.
6. Respondent was aware of the responsibility to report changes in her residence and other changes in circumstances effecting her FAP eligibility to the Department.
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. Respondent began using Michigan benefits outside of the State of Michigan beginning in April 2015 through March 2016 with the exception of the months of June 2015 through August 2015 and November and December 2015 based upon the IG-311.
9. The OIG indicates that the time periods they are considering the fraud period are April 1, 2015, through May 31, 2015; September 2015 through October 31, 2015, and January 1, 2016, through January 31, 2018, (fraud period).
10. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
11. During the alleged fraud period, Respondent was issued FAP benefits from the State of Texas beginning April 1, 2015, through March 2018.
12. This was Respondent's **first** alleged IPV.
13. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service as undeliverable.

## **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
  - the total amount is less than \$500.00, and
    - the group has a previous IPV, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
    - the alleged fraud is committed by a state/government employee.

BAM 720 (January 2017), pp. 12-13.

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and

- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 2017), p. 6; BAM 720, 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 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleged that Respondent committed an IPV of her FAP because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of Texas. A person cannot receive FAP in more than one state for any month. BEM 222 (October 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 4.

In order to establish a 10-year IPV disqualification, evidence must be presented to establish the following:

A person is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement,) of having made a fraudulent statement or representation regarding his/her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

In this case, the Department seeks an IPV due to the Respondent's alleged concurrent receipt of FAP benefits from two states at one time, the State of Michigan beginning April 2015 through January 2018 and the State of Texas beginning April 5, 2015, application date through March 31, 2018. (Exhibit A, pp. 44, 49.) The State of Texas in response to the OIG request for information regarding Respondent, provided documentations of purchases made by Respondent in Texas with her Texas FAP benefit. (Exhibit A, pp. 50-58.) In addition, the Department presented evidence that in April 2015 the Respondent began using her Michigan FAP benefits exclusively in the State of Texas during several periods and also advised Michigan in a Mid-Certification that she completed and filed with the Department that she had no changes to report including her address. (Exhibit A, pp. 25-41.) See also Finding of Facts, paragraphs 8 and 9. In addition, during the period of dual receipt from Texas and Michigan, the

Respondent used her FAP in Michigan during the months of July 2016 through January 2018. The Department also presented a Clear Report indicating a voter registration for Texas was issued on April 5, 2015; and a Texas driver's license was issued for Respondent on November 19, 2015. (Exhibit A, p. 43.) The Department also presented proof of receipt of Michigan FAP benefits May 2015 through all of 2016 and continuing thru January 2018 based upon the Benefit Issuance Summaries. (Exhibit A, pp. 59-65.)

In support of its proofs for concurrent receipt of FAP benefits in two states, the Department presented an email received from the State of Texas Department of Human Services which indicated that the Respondent was active for FAP in Texas benefits on April 1, 2015. (Exhibit A, p. 44.)

In this case the Respondent made a fraudulent statement(s) in completing her redeterminations for Michigan where she represented that there were no changes to her information including her Michigan address. The Respondent completed a Mid-Certification signed on April 23, 2015, and DHS-1010 Redetermination dated stamped May 3, 2017, and signed by Respondent and another DHS Mid Certification signed on April 7, 2017, where she acknowledged responsibility to report all changes and report truthfully on all documents. On all of these documents filed by Respondent with the Department, the Respondent indicated no changes; and case comments by the DHHS caseworker also specifically noted no changes as of July 2016 for the Review period. (Exhibit A.) At the time she completed the April 23, 2015, Mid-Certification, the Respondent was residing in Texas, had a Texas Voter Registration, was using Michigan benefits in Texas, and received FAP from Texas as well. None of the documents filed by the Respondent advised the Department of a change of address to Texas or that she was receiving FAP benefits from Texas. (Exhibit A, pp. 10-23.) Documents received from the State of Texas indicate that at the time of completing the documents for Michigan, referenced above, the Respondent was using her Texas issued benefits in Texas, and thus, was not in Michigan. (See Exhibit A, p. 57.)

Official contact was also made by the Department with the State of Texas to confirm the dates the Respondent began receiving FAP from Texas and her ongoing status and was received on October 18, 2017, listing an address for Respondent in [REDACTED] Texas, and a FAP benefit approval date of April 1, 2015. (Exhibit A, p. 45.)

In this case based upon the evidence presented, it is determined that the Department has established by clear and convincing evidence that Respondent made false representations regarding her residence in Michigan, which was false when made in order to receive multiple FAP benefits simultaneously from Michigan and Texas.

Thus the Department has established an Intentional Program Violation by clear and convincing evidence that Respondent misrepresented her residence in Texas so that she could continue to receive Michigan benefits and also receive benefits from Texas.

### **Disqualification**

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department did establish an IPV for concurrent receipt of FAP benefits from two states at one time, being Michigan and Texas, and thus, is entitled to a disqualification for an IPV for concurrent receipt of FAP benefits. The disqualification period for concurrent receipt of FAP benefits is 10 years.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (January 2017), p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged an overissuance of \$ [REDACTED] for the periods April 1, 2015, through May 31, 2015, (\$ [REDACTED] September 2015 through October 31, 2015, (\$ [REDACTED] and January 1, 2016, through January 31, 2018, (\$ [REDACTED]. Because Respondent was not eligible for concurrent receipt of benefits from two states, she was not eligible for any of the Michigan-issued FAP benefits issued during these fraud periods. Therefore, it is determined that the Department is entitled to recoup/collect an OI of \$ [REDACTED] from Respondent for overissued FAP benefits during the fraud period.

### **DECISION AND ORDER**

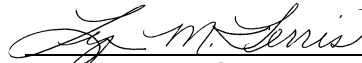
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Department impose a 10-year personal disqualification of Respondent from receipt of food assistance program benefits.

LMF/



**Lynn M. Ferris**

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  
MDHHS-Wayne-15-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] TX [REDACTED]

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