



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: August 6, 2018  
MAHS Docket No.: 18-004268  
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 August 1, 2018, from Lansing, Michigan. The Department was represented by Maria Williams, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

**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 [REDACTED], 2012, Respondent applied for assistance from the Department. In the application Respondent submitted, Respondent indicated that he did not have any employment income. The Department instructed Respondent to report all changes which could affect his eligibility for assistance to the Department within 10 days of the date of the change. Exhibit A, p. 10-28.

2. On September 5, 2012, the Department issued a Notice of Case Action to Respondent. The Notice advised Respondent that the Department had approved him for FAP benefits based on a reported employment income of \$0.00. The Notice instructed Respondent to report all changes which could affect his eligibility for assistance to the Department within 10 days of the date of the change. Exhibit A, p. 29-34.
3. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill the reporting requirement.
4. On December 22, 2012, Respondent began employment at [REDACTED]. Respondent was issued his first payroll remittance on January 4, 2013. Respondent remained employed by [REDACTED] through January 2014. Exhibit A, p. 36-39.
5. Respondent did not report to the Department that he obtained employment at [REDACTED] or that he began receiving income.
6. The Department issued FAP benefits to Respondent as if he did not have any employment income. The Department issued Respondent \$1,000.00 in FAP benefits from March 2013 through July 2013. Exhibit A, p. 40.
7. The Department conducted an investigation of Respondent's case when it discovered through a wage match that Respondent was employed. The Department determined that Respondent was overissued \$651.00 in FAP benefits from March 2013 through July 2013 because he had unreported income. Exhibit A, p. 45.
8. On April 20, 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.
9. The OIG requested recoupment of a \$651.00 overissuance of FAP benefits issued from March 2013 through July 2013, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
10. A notice of hearing was mailed to Respondent at his last known address and it 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), 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 (February 1, 2013), 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 he was entitled to receive. Respondent failed to report his income to the Department, so the Department did not budget his income in calculating his FAP benefits. This resulted in the Department issuing more FAP benefits to Respondent than he was entitled to receive. The Department presented sufficient evidence to establish that it overissued \$651.00 in FAP benefits to Respondent from March 2013 through July 2013.

### **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 (February 1, 2013) 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 met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the date he received the first payment reflecting the change. BAM 105 (March 1, 2013), p. 7. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he began employment within 10 days of receiving his first payroll remittance. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused a reduction in his FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

### **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, 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.

### **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 \$651.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$651.00 in accordance with Department policy.

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

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

Oakland 3 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Randa Chenault  
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Southfield, MI  
48033

**Respondent**

[REDACTED]  
[REDACTED], MI  
[REDACTED]