



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 18, 2018  
MAHS Docket No.: 18-004331  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on August 23, 2018, from Lansing, Michigan.

The Department was represented by Adriane Laugavitz, Regulation Agent of the Office of Inspector General (OIG). Ms. Laugavitz testified on behalf of the Department. The Department submitted 79 exhibits which were admitted into evidence.

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). The record closed at the conclusion of the hearing.

**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 for 12-months?

**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 April 24, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving program benefits for 12 months. [Dept. Exh. 4].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 70-79].
4. Respondent was aware of the responsibility to report all changes within 10-days to the Department and to truthfully include all members of her household and all household income, as evidenced by her signature on her [REDACTED], 2016 Assistance Application. [Dept. Exh. 11-53].
5. On July 9, 2016, Respondent got married. [Dept. Exh. 60-64].
6. On September 12, 2016, Respondent reported her marriage to the Department. [Dept. Exh. 60-63].
7. On October 21, 2016, Respondent reported her husband's income to the Department. [Dept. Exh. 65].
8. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 20].
9. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2016 through November 30, 2016 (fraud period). [Dept. Exh. 4].
10. During the fraud period, Respondent was issued \$1,180.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to -0- in such benefits during this time period. [Dept. Exh. 4].
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,180.00. [Dept. Exh. 4].
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 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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
  - The total amount is less than \$500, and
    - the group has a previous Intentional Program Violation, or
    - the alleged Intentional Program Violation involves Food Assistance Program 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, pp 12-13 (10/1/2017).

### **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 720, p 1 (emphasis in original).

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 273.16(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 established by clear and convincing evidence that Respondent married her husband, [REDACTED], on July 9, 2016, but did not notify the Department of her marriage and her husband's income until October 21, 2016.

### **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 2. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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, Respondent is disqualified from receiving FAP benefits for 12-months based on her first IPV.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

In the above captioned matter, the Department has established that Respondent intentionally failed to timely notify the Department of her marriage or her husband's income to maintain her FAP benefits. Based on the untimely notification to the

Department of her marriage and her husband's income, Respondent received \$1,180.00 in FAP benefits when she was not entitled to any, resulting in a \$1,180.00 overissuance which the Department is entitled to recoup.

### **DECISION AND ORDER**

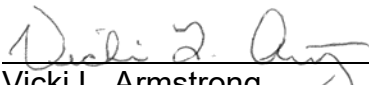
Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, this Administrative Law Judge concludes that:

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 \$1,180.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,180.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for a period of 12 months.

VLA/nr

  
\_\_\_\_\_  
Vicki L. Armstrong  
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

Tuscola County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Rolando Gomez  
1365 Cleaver Road  
Caro, MI  
48723

**Respondent**

[REDACTED]  
MI  
[REDACTED]