



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: August 21, 2018  
MAHS Docket No.: 18-004409  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on July 24, 2018, from Lansing, Michigan. The Department was represented by Brian Siegfried, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

**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 the Food Assistance Program (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. Department records indicate that on November 2, 2015, Respondent reported to the Department that her employment had ended. Exhibit A, p 37.
2. On a Redetermination (DHS-1010) form received by the Department on March 7, 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of employment status and increases in earned income. Respondent did not have an apparent physical or mental

impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-17.

3. Respondent acknowledged under penalties of perjury that her March 7, 2016, Redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 17.
4. Respondent reported on her March 7, 2016, Redetermination form that no one in her household was employed, including herself, a non-related adult, and her children. Exhibit A, p 15.
5. On March 17, 2016, the Department notified Respondent that she was approved for ongoing Food Assistance Program (FAP) benefits based on no earned income being received by anyone in the household. Exhibit A, pp 18-22.
6. On a Redetermination (DHS-1010) form received by the Department on June 27, 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of employment status and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 23-28.
7. Respondent acknowledged under penalties of perjury that her June 27, 2016, Redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 28.
8. Respondent reported on her June 27, 2016, Redetermination form that no one in her household was employed and that there were no changes to the size and composition of her household. Exhibit A, pp 24-26.
9. On June 14, 2016, the Department notified Respondent that she was approved for ongoing Food Assistance Program (FAP) benefits based on no earned income being received by anyone in the household. Exhibit A, pp 29-32.
10. Respondent failed to report to the Department that a member of her Food Assistance Program (FAP) benefit group had been employed from December 3, 2015, through January 7, 2016, and from January 25, 2016, through January 29, 2016, and February 1, 2016, through October 25, 2016. Exhibit A, p 40.
11. Respondent failed to report to the Department that a member of her Food Assistance Program (FAP) benefit group has received earned income in each month from January 8, 2016, through October 14, 2016. Exhibit A, p 41.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$2,486 from February 1, 2016, through September 30, 2016. Exhibit A, pp 33-34.

13. On April 27, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,166 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
14. The Department's OIG filed a hearing request on April 27, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
15. This was Respondent's first established IPV.
16. 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
  - the total OI amount is less than \$500, 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

### **Overissuance**

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include changes in employment status and earned income received by all benefit group members. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

Department records indicate that on November 2, 2015, Respondent reported to the Department that her employment had ended. On a Redetermination (DHS-1010) form received by the Department on March 7, 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of employment status and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that her March 7, 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on her March 7, 2016, Redetermination form that no one in her household was employed. On March 17, 2016, the Department notified Respondent that she was approved for ongoing FAP benefits based on no earned income being received in the household.

On a Redetermination form received by the Department on June 27, 2016, Respondent again acknowledged her duties and responsibilities including the duty to report changes of employment status and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that her June 27, 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on her June 27, 2016, Redetermination form that no one in her household was employed and that there were no changes to the size and composition of her household. One June 14, 2016, the Department notified Respondent that she was approved for ongoing FAP benefits based on no earned income being received by anyone in the household.

Respondent failed to report that a member of her FAP benefit group received earned income from January 8, 2016, through October 14, 2016.

Respondent testified that she reported to the Department that an adult member of her household and FAP benefit group had moved out of her home periodically during the period of alleged overissuance. Respondent failed to offer any evidence supporting her claims to have reported changes to the size of her FAP benefit group.

The record evidence supports a finding that Respondent received FAP benefits as a group of four, and the documents entered into the hearing record indicate that her household consisted of four people during the period of alleged overissuance. No evidence was presented on the record to establish that anyone had left Respondent's household during the period of alleged overissuance, and all of the forms signed by Respondent in the hearing record indicate four people in her household.

Respondent received FAP benefits totaling \$2,486 from February 1, 2016, through September 30, 2016. If Respondent had reported the earned income being received by a member of her household to the Department, then she would have been eligible for only \$320 of those benefits. Therefore, Respondent received a \$2,166 overissuance of FAP benefits.

### **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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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).

The Department has the burden of establishing by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged her duties and responsibilities on Redetermination forms received by the Department on March 7, 2016, and June 27, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that both of her redetermination forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on both Redetermination forms that no one in her household was employed. The Department notified Respondent in writing that she remained eligible for FAP benefits based on \$0 earned income being received in her household.

Respondent was approved for FAP benefits based on a group of four people, with none of them receiving any earned income. If Respondent had truthfully reported the earned income that was being received by a FAP group member, then the amount of her FAP benefits would have been reduced.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that a member of her FAP benefit group was employed and receiving earned income for the purposes of maintaining her eligibility for FAP benefits that she would not have been eligible for otherwise.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as he 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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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.

The record evidence indicates that this is Respondent's first established IPV.

The Department has established an Intentional Program Violation (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. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$2,166.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,166 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/hb

  
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**Kevin Scully**  
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**

Kathleen Verdoni  
411 East Genesee  
PO Box 5070  
Saginaw, MI 48607

Saginaw County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

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**Respondent**

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