



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 5, 2018  
MAHS Docket No.: 18-006836  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 29, 2018, from Lansing, Michigan. The Department was represented by Allyson Carneal 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).

Respondent's Exhibit a Pages 1-81 were admitted as evidence.

**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?

### **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 June 27, 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. On the Assistance Application signed by Respondent on [REDACTED], 2016, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Between February of 2017, and March of 2018, Petitioner was issued FAP from Tennessee and continuously used her Tennessee-issued FAP benefits.
8. On [REDACTED], 2018, Petitioner applied for FAP in Michigan, and denied receipt of FAP from any other state.
9. The OIG indicates that the time period they are considering the fraud period is February 7, 2017, through March 31, 2018.
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 Tennessee and continuously used her Tennessee benefits, so that the balance was \$ [REDACTED] as of March 24, 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 Services 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.

### **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. 6; BAM 720

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, (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.

### **Disqualification**

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

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. 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.

### **Overissuance**

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

Respondent applied for FAP for herself, husband [REDACTED], and three minor children, and acknowledged the obligation to report changes, per Michigan DHS-1171 dated [REDACTED], 2016. On [REDACTED], 2017, [REDACTED] applied for FAP in Tennessee for herself, her husband [REDACTED] and child [REDACTED]. Between February of 2017, and March of 2018, [REDACTED] was issued FAP benefits from Tennessee, and continuously used her Tennessee-issued SNAP (FAP) benefits, so that the balance on the Tennessee card was \$[REDACTED] as of March 14, 2018. On [REDACTED], 2018, Respondent again applied for FAP in Michigan for herself, her husband [REDACTED] child [REDACTED] and two other children, and denied receipt of FAP benefits from any other state. Respondent's Michigan-issued FAP was utilized throughout the dual assistance period.

In this case, Evidence on the record establishes by clear and convincing evidence that Respondent did receive a total over-issuance of \$ [REDACTED] in FAP benefits from February 7, 2017, through March 31, 2018. Evidence on the record establishes that Petitioner received concurrent FAP benefits in Michigan and Tennessee. Respondent did commit an 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, 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 Respondent be personally disqualified from participation in the FAP program for 10 years in accordance with Department policy

LL/bb



**Landis Lain**

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**

Carisa Drake  
190 East Michigan  
Battle Creek, MI 49016

Calhoun County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

[REDACTED]  
[REDACTED] MI [REDACTED]