



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: September 27, 2018  
MAHS Docket No.: 18-006881  
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 August 28, 2018, from Lansing, Michigan. The Department was represented by Maria Williams, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP), Medical Assistance (MA), 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 Family Independence Program (FIP) and 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. On a Redetermination (DHS-1010) form received by the Department on August 24, 2016, Respondent acknowledged her duties and responsibilities including the duty to report persons in her home. Respondent did not have an

apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 13-18.

2. Respondent acknowledged under penalties of perjury that her August 24, 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 18.
3. Respondent reported on her August 24, 2016, Redetermination form that there had been no changes to the circumstances affecting her eligibility for benefits. Exhibit A, pp 13-18.
4. Respondent acknowledged under penalties of perjury that her Redetermination form received by the Department on December 31, 2016, was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 19-26.
5. Respondent reported on her December 31, 2016, Redetermination form that there were five people in her household including a son (dob 7/19/2002). Exhibit A, p 21.
6. Respondent acknowledged under penalties of perjury that her Redetermination form received by the Department on August 21, 2017, was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 27-34.
7. Respondent reported on her August 21, 2017, Redetermination form that her son (dob 7/19/2002) would leave her household. Exhibit A, p 28.
8. On July 5, 2017, the Department received documents showing that Respondent's son (dob 7/19/2002) was enrolled in [REDACTED], in the state of Michigan. The verification form was signed by a school employee. Exhibit A, pp 36-38.
9. On June 26, 2018, the employee listed on the July 5, 2017, school enrollment form denied signing the form and that the signature on that form was a forgery. Exhibit A, p 39.
10. An employee of [REDACTED] in the state of Texas, reported to the Department that Respondent's son (dob 7/19/2002) had enrolled in that school on November 30, 2016.
11. Respondent testified that her son had left her household in October of 2016, but could not recall when she reported his absence to the Department.
12. Respondent received Family Independence Program (FIP) benefits totaling \$4,356 from January 1, 2017, through October 31, 2017. Exhibit A, pp 44-46.

13. Respondent received Medical Assistance (MA) benefits with a value of \$1,796.55 from January 1, 2017, through October 31, 2017. Exhibit A, pp 85-89.
14. Respondent received Food Assistance Program (FAP) benefits totaling \$5,527 from January 1, 2017, through September 30, 2017. Exhibit A, pp 47-48.
15. On June 29, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,708.55 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-10.
16. The Department's OIG filed a hearing request on June 29, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
17. This was Respondent's first established IPV.
18. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 persons in the home. 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 pending 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.

On August 24, 2016, the Department received Respondent's Redetermination (DHS-1010) where she acknowledged her duties and responsibilities including her duty to report persons entering or leaving her household. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On December 31, 2016, Respondent reported to the Department on a Redetermination form that her son (dob 7/19/2002) remained in her household. Respondent acknowledged under penalties of perjury that her December 31, 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's December 31, 2016, Redetermination form contained false information because she had failed to report her son moving to the state of Texas. The record evidence supports a finding that Respondent's son (dob 7/19/2002) had been enrolled into a Texas school on November 30, 2016. Findings of the son's school enrollment are based on hearsay statements, but these statements are commonly relied upon by IPV investigators and the facts contained within them were not challenged during the hearing. Further, Respondent testified that her son (dob 7/19/2002) left her household in October of 2016.

Respondent received FIP benefits totaling \$4,356 from January 1, 2017, through October 31, 2017, but would have been eligible for only \$2,740 if she had reported her son out of the household in a timely manner. Therefore, Respondent received a \$1,616 overissuance of FIP benefits.

Respondent received MA benefits for her son with a value of \$1,796.55, but would not have been eligible for any of those benefits if she had reported that her son was no longer a Michigan resident. Therefore, Respondent received a \$1,796.55 overissuance of MA benefits.

Respondent received FAP benefits totaling \$5,527 from January 1, 2017, through September 30, 2017. If Respondent had reported that her son was no longer living in her household, she would have been eligible for \$4,231 of FAP benefits during that period. Therefore, Respondent received a \$1,296 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 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).

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 the duties and responsibilities of receiving FIP, MA, and FAP benefits on a Redetermination (DHS-1010) form received by the Department on August 24, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent falsely reported on another Redetermination form received by the Department on December 31, 2016, that her son (dob 7/19/2002) continued to live in her household when he had moved to Texas, which was established by his enrollment in school in Texas. As a result of Respondent's failure to truthfully and accurately report the size and composition of her household, she received an overissuance of FIP, MA, and FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that her son (dob 7/19/2002) had left her household and moved to Texas for the purposes of maintaining her eligibility for FIP, MA, and 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 Family Independence Program (FIP) benefits in the amount of \$1,616.
3. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$1,796.55.
4. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$1,296.
5. The Department is ORDERED to initiate recoupment procedures for the amount of \$4,708.55 in accordance with Department policy.

6. It is FURTHER ORDERED that Respondent be disqualified from the Family Independence Program (FIP) and 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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**DHHS**

Randa Chenault  
25620 W. 8 Mile Rd  
Southfield, MI 48033

Oakland County (District 3), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Respondent**

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