



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] GA [REDACTED]

Date Mailed: October 23, 2018  
MAHS Docket No.: 18-007758  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on October 18, 2018, from Lansing, Michigan. The Department was represented by Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [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 Medical Assistance (MA) and 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 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. In 1994, Respondent was determined to have committed an IPV related to her FAP benefits. Exhibit A, p. 79.
2. On [REDACTED], 2015, Respondent applied for assistance from the Department, including MA and FAP. Respondent asserted in her application that she was living

in Michigan. The Department instructed Respondent in her application to report all changes to the Department which could affect her eligibility for assistance within 10 days of the date of the change, including changes in address. Exhibit A, p. 13-41.

3. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or ability to fulfill her responsibilities to the Department.
4. On September 17, 2016, Respondent began using her FAP benefits to complete EBT transactions exclusively in Georgia. Exhibit A, p. 49-55.
5. On December 6, 2016, Respondent submitted a Redetermination to the Department to update her address. Respondent asserted in her response that she was still living in Michigan. Exhibit A, p. 42-48.
6. The Department investigated Respondent's case when it noticed that her EBT transactions were primarily being completed out of state.
7. The Department interviewed Respondent, and Respondent advised the Department that she moved to Georgia in January 2017.
8. On July 16, 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 Respondent be disqualified from FAP for 24 months for a second IPV. The OIG requested recoupment of \$9,807.20 in MA benefits and \$2,134.00 in FAP benefits.
10. A notice of hearing was mailed to Respondent at her 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.

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.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 1, 2018), 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.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. For MA, an individual is a resident if she lives in Michigan other than temporary absences from which she intends to return to Michigan. BEM 220, p. 2. For FAP, an individual is a resident if she lives in Michigan for any purpose other than a vacation, regardless of whether she has an intent to remain permanently. BEM 220, p. 1.

Here, the Department presented sufficient evidence to establish that Respondent was not living in Michigan beginning January 2017. Since Respondent was not living in Michigan as of January 2017, Respondent had an obligation to report a change to the Department. Once Respondent moved to Georgia, Respondent had 10 days to report the change to the Department, the Department then had 10 days to act on the change, and then any negative action would have required a waiting period of at least 12 days. Thus, the first month that the change in Respondent's household could have affected her FAP benefits would have been September 2016. BAM 105 (January 1, 2018) and BAM 220 (October 1, 2018). Thus, although Respondent moved in January 2017, the first month that could have been affected by her move was March 2017.

Since Respondent was not living in Michigan, Respondent was ineligible for benefits from the Department. All benefits issued to Respondent beginning in March 2017 were overissued because Respondent was not entitled to them. The Department presented sufficient evidence to establish that it overissued \$6,897.24 in MA benefits (March 2017 through March 2018) and \$1,358.00 in FAP benefits (March 2017 through September 2017) to Respondent.

### **Intentional Program Violation**

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 (October 1, 2017), 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 her circumstances to the Department within 10 days of the date of the change. BAM 105 (January 1, 2018), p. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that her address changed within 10 days of the date she moved to Georgia. Respondent did not provide any explanation for her inaction. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused her benefits to cease. Respondent did not have any apparent physical or mental impairment that would limit her 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, the Department presented sufficient evidence to establish that Respondent was previously found to have committed an IPV related to FAP benefits. Thus, this is Respondent's second IPV related to FAP. Therefore, Respondent is subject to a two-year disqualification from FAP.

### **DECISION AND ORDER**

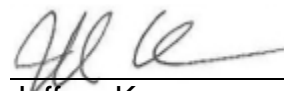
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of \$6,897.24 in MA benefits and \$1,358.00 in FAP benefits 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 FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$6,897.24 in MA benefits and \$1,358.00 in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of two years.

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

Wayne 57 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Richard Latimore  
4733 Conner  
Detroit, MI  
48215

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED], GA  
[REDACTED]