



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MN [REDACTED]

Date Mailed: November 27, 2018  
MAHS Docket No.: 18-007822  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 November 7, 2018, from Detroit, Michigan. The Department was represented by Thomas Malik, Regulation Agent 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).

**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 benefits for the 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 July 20, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having 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. Respondent **was** aware of the responsibility to report changes in household circumstances that affect eligibility to the Department and to truthfully and accurately answer all questions on the application for benefits.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the period it is considering the fraud period is February 2017 through June 2017 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. 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), 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, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500 or more under the AHH program.
- FAP trafficking overissuances 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 or more, or
  - the total 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.

BAM 720 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

### **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 (January 2018), p. 8; 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 273.16(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 seeks an IPV alleging that Petitioner failed to report her change in residency outside of Michigan; and thus, she was not entitled to Michigan FAP benefits.

Respondent submitted two online applications for FAP benefits on December 29, 2016, and February 11, 2017. On each application, Respondent listed herself as homeless but provided a mailing address in ██████████ Michigan. In review of Respondent's case file, the Department also determined that Respondent submitted both applications from an Internet Protocol (IP) address in Minnesota.

In support of its allegations, the Department presented an IG-311 FAP transaction history showing that from the day Respondent was issued Michigan FAP benefits until the day her Michigan FAP benefits were exhausted, Respondent never made a single transaction with her benefits in Michigan. All transactions using her FAP benefits were completed in Minnesota. In addition, a LexisNexis Report showing all addresses with which Respondent has been associated indicates that Respondent became associated with an address in Saint Paul, Minnesota in February 2017 and continued to be associated with it until May of 2018. Respondent received Michigan issued FAP benefits around this period from December 29, 2016, through June 30, 2017. Relying upon this evidence and presumably, based upon policy found in BEM 220 (January 2016), p. 1, and BEM 212 (January 2017), p. 3, the Department asserts that Respondent was not a Michigan resident and therefore not eligible for Michigan-issued FAP benefits.

Federal Regulations provide with respect to FAP recipient's residency requirements that:

- (a) *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). *The State agency shall not impose any durational residency requirements.* The State agency shall

not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. *Nor shall residency require an intent to reside permanently in the State or project area.* Persons in a project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan.

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (April 2018), p. 1. To comply with the federal regulations, this rule can only apply at application.

In this case, the Department presented sufficient evidence that Respondent was not present in Michigan at the time of application and was not in Michigan for more than seven months. She was not in Michigan at the time of the December 2016 application but instead in Minnesota; she was not in Michigan when she started using her benefits in January 2017; she was not in Michigan when she submitted her application in February 2017, nor was she present in Michigan at any point through at least July 4, 2017. After reviewing the evidence, the Department has met its burden of proof in establishing by clear and convincing evidence that Respondent misrepresented her residency on her application for FAP benefits in December 2016 and February 2017. Therefore, Respondent committed an IPV.

### **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. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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; 7 CFR 273.16(b)(1) and (5). 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7CFR 273.18. The amount of a FAP OI

is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged an \$[REDACTED] OI for February 13, 2017, through June 30, 2017, based upon Respondent's lack of Michigan residency. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits at the time of application and Respondent was not a resident at application. BEM 220, p. 1.

Since Respondent submitted a false application on February 13, 2017, the Department began the OI the same day. The FAP Benefit Summary Inquiry presented by the Department showed that from February 2017 through June 2017, Respondent received \$[REDACTED] in FAP benefits. Since Respondent was not living in Michigan at the time of her application, she was not eligible for any of the FAP benefits issued during this period. Thus, the Department has met its burden of proof and is entitled to recoup and/or collect \$886.00 from Respondent for overissued FAP benefits from February 2017 through June 2017.

### 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 **received** an OI of program benefits in the amount of \$[REDACTED] from the FAP.

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 disqualified from FAP for a period of **12 months**.

AMTM/

  
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**Amanda M. T. Marler**  
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**

Denise McCoggle  
MDHHS-Wayne 15-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] MN [REDACTED]

M Shumaker  
Policy Recoupment  
A M T Marler  
MAHS