



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] FL [REDACTED]

Date Mailed: November 27, 2018  
MAHS Docket No.: 18-007826  
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 Amanda Zimmerman, 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 19, 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 which affect eligibility to the Department.
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. From January 23, 2017, through April 18, 2017, Respondent received Florida-issued food assistance benefits
9. The Department alleges that Respondent received an OI in Michigan-issued FAP benefits in the amount of \$[REDACTED] because she was not entitled to the receipt of benefits from both states.
10. This was Respondent's **first** alleged IPV; however, the Department is seeking a disqualification for 10 years based upon concurrent receipt of benefits.
11. 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 alleges that Respondent committed an IPV of the FAP because he received concurrent benefits in Michigan and Florida and failed to report his change in household circumstances to the Department.

Federal Regulations provide with respect to FAP recipients' 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 or any particular state.

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

(January 2016), p. 1. In order to comply with the federal regulations, this rule can only apply at application.

The Department has utilized BEM 212 to establish a loss of residency, but it does not discuss residency, the policy discusses the removal of an individual from a group. BEM 212 (October 2015), p. 3. For BEM 212 to be in compliance with federal regulations, it cannot apply to the residency requirement. BEM 212 can only apply to assist the Department in defining who belongs in a group, especially because after application, there is no federal requirement to maintain a residence in a specified state. A FAP recipient is free to use their FAP benefit in any state. So long as there was no misrepresentation of residency at the time of application, there can be no IPV for failure to maintain Michigan residency or failure to inform the Department about a change in residency because it does not affect eligibility.

The Department presented a Michigan application submitted by Respondent on September 13, 2016. No evidence was presented to show that Petitioner was not a Michigan resident at the time of his FAP application in September 2016. Since there was no evidence that Respondent was not a resident at application, there is no IPV based upon Respondent's residency.

To establish concurrent receipt of benefits in support of the IPV and disqualification, the Department presented an Out-of-State Inquiry response from the State of Florida confirming that Respondent received food assistance benefits from Florida for the month of January 2017, and March through June 2017. As seen above in the Federal Regulation, food assistance clients are not allowed to receive food benefits in more than one place at the same time. The same rule is seen in BEM 222 (July 2013), p. 3. An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food assistance benefits simultaneously shall be ineligible to participate in the program for a period of 10 years. 7 CFR 273.16(b)(5); BAM 720 (January 2016), pp. 5, 13, 14, 16. Respondent cannot have been a resident of both Michigan and Florida at the same time. When Respondent submitted his Florida application for benefits, he advised Florida that he was a resident of the State of Florida and was not receiving benefits from any other state. (Exhibit A, pp. 31-32.) Based upon the evidence presented, Respondent truthfully identified his new residence to Florida, but misrepresented his status as a recipient of benefits from Michigan on his Florida application, and failed to inform the Department that he was receiving benefits from another state. Since the Department has not shown that Respondent made a misrepresentation regarding his identity or residency, the Department has not met its burden of proof in establishing an IPV based upon a concurrent receipt of benefits and a misrepresentation of identity or residency. However, the Department has established that Respondent failed to report his receipt of benefits from Florida to the Department which resulted in Respondent receiving more benefits than he was entitled to receive. Since Respondent received benefits from both states for an extended period without informing the Department,

there is sufficient evidence present to show that his failure to inform the Department was intentional. Therefore, Respondent has 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. However, the Department failed to show that Respondent committed the IPV by intentionally misrepresenting his identity or residency; therefore, the 10-year disqualification is not applicable. This was Respondent's first IPV. Therefore, he 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 a \$[REDACTED] OI for February 2017 through June 2017 based upon concurrent receipt of benefits. As discussed above, a client is not entitled to the receipt of food assistance benefits from more than one state.

A review of the evidence presented shows that Respondent received Michigan issued FAP benefits from September 2016 through June 2017 continuously. For February 2017 through June 2017, his benefit rate was \$[REDACTED] per month. In addition, Respondent received Florida issued food assistance benefits for January 2017, as well as March through June 2017. Therefore, Respondent did not receive concurrent benefits for February 2017. Since there was no dual benefit for February, Respondent was still entitled to a benefit from Michigan even if he was in Florida as discussed above. Therefore, the OI is reduced by \$[REDACTED] or the value of his FAP benefit from February 2017, and the new total OI of \$[REDACTED]

### **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 reduce the OI to \$ [REDACTED] for the period February 2017 through June 2017, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



AMTM/

**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**

Lauren Casper  
MDHHS-Macomb 20-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] FL [REDACTED]

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