



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: October 18, 2018  
MAHS Docket No.: 18-008367  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** John Markey

**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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on October 3, 2018, from Lansing, Michigan. The Department was represented by Thomas Malik, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 112 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-112.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and/or Family Independence Program (FIP) 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 and/or FIP benefits?

**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 [REDACTED], 2015, Respondent submitted to the Department an application for assistance. Exhibit A, pp. 12-45.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and she understood her responsibility to report any changes to income or job status within 10 days after receiving her first paycheck. Further, Respondent acknowledged that she understood lying to the Department to get benefits or failing to report as required could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 12-45.
3. On August 17, 2015, the Department issued to Respondent a Redetermination, Form 1010, in order to gather relevant information regarding Respondent's ongoing eligibility for FAP and FIP benefits. Exhibit A, pp. 46-51.
4. On August 20, 2015, Respondent began working for [REDACTED], Inc. ([REDACTED]). Exhibit A, p. 62.
5. On August 31, 2015, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pp. 46-51.
6. On the returned Redetermination, Respondent was asked whether anyone in his household had income. The question was prefaced with a statement instructing Respondent to provide proof of all income his household received, including any stopped income and pay records from the previous 30 days. Respondent simply answered "Yes" and provided further information in the comments section that followed the question. However, none of the information provided related to earned income from employment. Exhibit A, pp. 41-46.
7. Shortly after submitting the Redetermination, Respondent participated in a Redetermination interview with her worker from the Department. During that interview, Respondent informed the worker that she recently began working for [REDACTED].
8. From October 1, 2015, through July 31, 2016, the Department issued Respondent \$3,038 of FAP benefits based on a reported income of zero. Exhibit A, pp. 66-86, 108-109.
9. From October 1, 2015, through July 31, 2016, the Department issued Respondent \$3,060 of FAP benefits based on a reported income of zero. Exhibit A, pp. 87-107, 110-112.
10. On August 17, 2018, the Department's OIG filed a hearing request to establish an IPV.
11. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.

12. The Department's OIG requested that Respondent be disqualified from receiving FIP benefits for one year for a first alleged IPV.
13. The Department considers the alleged fraud period to be from October 1, 2015, through July 31, 2016.
14. During the alleged fraud period, Respondent was issued \$3,038 of FAP benefits, and the Department believes Respondent was only entitled to \$160 during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$2,878.
15. During the alleged fraud period, Respondent was issued \$3,060 of FIP benefits, and the Department believes Respondent was only entitled to \$81 during that time period. Thus, the Department is seeking to establish an overissuance of FIP benefits of \$2,979.
16. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.

### **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 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 to .3131.

### **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, 2016), p. 1. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting her wages from her employment with [REDACTED], which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of both FAP and FIP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$2,878 of FAP benefits and \$2,979 of FIP benefits from October 1, 2015, through July 31, 2016. Thus, the Department has established a total overissuance of \$5,857.

### **Intentional Program Violation**

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 1, 2016) page 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, page 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, the Department has not 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 (October 1, 2016), pages 11-12. Furthermore, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, page 9. The Department clearly and correctly instructed Respondent to tell the truth and to report changes to the Department within 10 days at the time of application.

The Department's position is that Respondent failed to report that she was working for [REDACTED] at any time. Respondent, however, testified that during the Redetermination interview shortly after she obtained her job, she told her worker from the Department that she was working. By doing so, Respondent satisfied her reporting requirement. The Department countered by claiming that it had no evidence of Respondent having made such a report. This alleged lack of evidence, however, is not sufficient to rebut Respondent's credible assertion that she told her worker about the job when they spoke. Whether or not Respondent informed the Department of the job during the interview is dispositive of this case. Respondent's credible and largely un rebutted statement that she did is sufficient to prevent the Department from proving its case by clear and convincing evidence. Thus, I find that the Department failed to meet its

burden of proving by clear and convincing that evidence that Respondent committed an IPV with respect to either her FAP or FIP benefits.

### **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, pages 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, page 16.

In this case, there is no IPV. Thus, Respondent is not disqualified from either FAP or FIP.

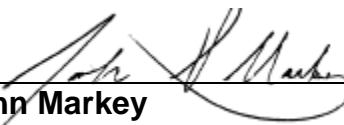
### **DECISION AND ORDER**

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 not established by clear and convincing evidence that Respondent committed an IPV with respect to either her FAP or FIP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$2,878 that the Department is entitled to recoup and/or collect.
3. The Department has established by clear and convincing evidence that Respondent received an overissuance of FIP benefits in the amount of \$2,979 that the Department is entitled to recoup and/or collect
4. Respondent is not subject to a disqualification from receiving either FAP or FIP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$5,857 established in this matter less any amounts already recouped or collected.

JM/dh

  
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**John Markey**  
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**

Pam Farnsworth  
903 Telegraph  
Monroe, MI 48161

Monroe County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Respondent**

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