



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

Date Mailed: December 7, 2018  
MAHS Docket No.: 18-008506  
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 November 8, 2018, from Lansing, Michigan. The Department was represented by Kelvin Christian, 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 the 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 an application for assistance dated December [REDACTED] 2016, Respondent acknowledged that he read, or had explained to him, and understood the attached form providing program information and rights and responsibilities. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 14-15.

2. Respondent starting using Food Assistance Program (FAP) benefits in Alabama on December [REDACTED] 2016, after not making any purchases in Michigan with his benefits, and used them exclusively in Alabama through August 31, 2017. Exhibit A, pp 10-13.
3. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from December 9, 2016, through July 31, 2017. Exhibit A, p 22.
4. On August [REDACTED] 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
5. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
6. This was Respondent's first established IPV.
7. 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 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.

The Department is prohibited from establishing a durational requirement to establish residency. See 7 CFR 273.3.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

The targeted MiCAP population is SSI individuals with the following characteristics:

- Age 18 or older.
- Receives SSI income and no other type of income.
- Meets the Social Security Administrations (SSA) definition of independent living.
- Resides in Michigan.
- Purchases and prepares food separately.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 618 (April 1, 2018), p 1.

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

On a Michigan Combined Application Project (MiCAP) (DHS-513) form dated December █ 2016, Respondent acknowledged that he read, or had explained to him and understood the attached form providing program information and rights and responsibilities. No evidence was presented on the record that Respondent made any purchases in Michigan using his FAP benefits. Respondent began using his FAP benefits in Alabama on December █ 2016, and used them exclusively in Alabama through August 31, 2017.

Respondent received FAP benefits totaling \$█ from December 9, 2016, through July 31, 2017.

Eligibility for benefits under MiCAP requires that the recipient reside in Michigan. No evidence was presented on the record that Respondent was living in Michigan at the time he signed his application or used his FAP benefits. Respondent was not eligible to participate in MiCAP while residing in Alabama. Therefore, Respondent received a \$█ 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.*

On December [REDACTED] 2016, the Department received Respondent's application for FAP benefits. The evidence presented on the record does not establish that Respondent claimed to reside in Michigan or claimed that he intended to remain a Michigan resident when he applied for FAP benefits.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that Respondent made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act. See 7 CFR 273.16(c). Federal regulations allow FAP recipients to use their benefits outside Michigan and the evidence does not support a finding that Respondent was not in Alabama temporarily.

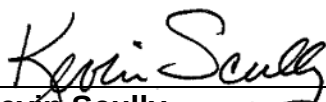
The Department has not established an Intentional Program Violation (IPV).

### **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 NOT established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent DID receive an OI of Food Assistance Program (FAP) benefits in the amount of \$[REDACTED] due to client error.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$[REDACTED] in accordance with Department policy.
4. The Department is ORDERED to delete the finding of IPV from Respondent's case file.

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**

Richard Latimore  
4733 Conner  
Detroit, MI 48215

Wayne County (District 57), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] AL [REDACTED]