



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: March 15, 2019  
MAHS Docket No.: 18-012320  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 March 12, 2019, from Lansing, Michigan. The Department was represented by Dana Daniels, Regulation Agent of the Office of Inspector General (OIG). Petitioner [REDACTED] appeared and testified at the hearing.

Department's Exhibit A pages 1-33 were admitted to evidence.

**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 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 November 24, 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 disclose employment and income.
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 time period it is considering the fraud period is February 1, 2016 – April 30, 2016 (fraud period).
7. During the fraud period, Respondent was issued \$1,071.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$0.
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 Services 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 January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 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, pp 12-13 (1/1/2016)(Emphasis added).

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016)).

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720; see also 7 CFR 273. 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.

### **Disqualification**

A Respondent who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 2. Respondents are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC Respondents who intentionally violate CDC program rules are

disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

### **Overissuance**

**When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).**

**Clear and convincing** proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds on [REDACTED], 2015, Respondent completed the DHHS Redetermination form, which the signature verifies acknowledgement and understanding of rights and responsibilities for properly reporting changes in household circumstances, within ten (10) days after signing. On this application, she reported that she was employed, with "Print Comm".

On November 2, 2015, Respondent was mailed a Notice of Case Action advising her that she was a Simplified Reporter, and that if her total monthly household income (for two members in the household) exceeded \$1,726.00 she had an obligation to report this to the DHHS Specialist, by the 10th of the following month. During a review the Specialist identified Respondent was employed with "[REDACTED]" during the 4th Quarter in the year 2015 working through [REDACTED] 2017. This was the first indication to DHHS that Respondent was working for a second employer, and she was receiving additional household income, during the investigative time period.

The Specialist used The Work Number, which identified Respondent's employment with "[REDACTED]" began [REDACTED], 2015, receiving the first paycheck on [REDACTED] 2015, and receiving the last paycheck on [REDACTED] 2017. Respondent failing to report she was receiving additional household income, caused her total monthly household income to exceed the Simplified Reporting limit of \$1,726.00, and receive an overissuance of FAP benefits during the investigative time period. Respondent received \$1,071.00 in FAP benefits beginning February 1, 2015 through April 30, 2015. Respondent was not eligible to receive any FAP benefits, during this time period. Respondent was over issued \$1,071.00 in FAP benefits, during the investigative time period.

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it

determined that Respondent failed to notify the Department of her earned income and when it determined that Respondent committed and Intentional Program Violation.

**DECISION AND ORDER**

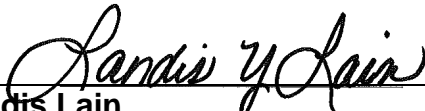
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$1,071.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,071.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for the requested twelve months in accordance with Department policy.

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
Administrative Law Judge  
for Robert Gordon, 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**

Tamara Morris  
125 E. Union St 7th Floor  
Flint, MI 48502

Genese County (Union), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]