



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: March 23, 2018  
MAHS Docket No.: 17-014093  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 22, 2018, from Detroit, Michigan. The Department was represented by Gary Shuk, 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 FAP benefits for ten years?

**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 September 26, 2017 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 his residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is August 11, 2016 through August 31, 2017 (fraud period).
7. During the alleged fraud period, Respondent was issued \$240 in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State 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 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), and Department of Health and Human Services 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:

- 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
  - the total amount is less than \$500.00, 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 2016), pp. 12-13.

### **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 2016), p. 6; 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(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 his FAP benefits because he received Michigan-issued FAP benefits at the same time he was issued FAP benefits in [REDACTED]. Under Department policy, a person **cannot** receive FAP benefits in more than one state for any month. BEM 222 (March 2016), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on [REDACTED], 2016, in which he acknowledged that he received the Information Booklet advising of "Things You Must Do" (which explained reporting change circumstances, including residency). Additionally, Respondent stated that he was living in Michigan and was not receiving food assistance benefits at that time.

The Department presented correspondence from the State of [REDACTED] which revealed that Respondent received FAP benefits in [REDACTED] from June 2016 through the current date of the correspondence, which was July 18, 2017. The Department further presented a benefit issuance summary relating to Respondent's Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits during the fraud period. The Department also presented Respondent's FAP usage history which shows Respondent began using his FAP benefits exclusively in [REDACTED] beginning September 23, 2016 and continuing throughout the fraud period.

The evidence presented establishes that for the period of August 2016 through July 2017 Respondent received Michigan-issued FAP benefits, and during the same period, received food assistance benefits issued by the State of [REDACTED]. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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, p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, 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. 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency. BAM 720, p. 16. In this case, the Department presented Respondent's application for FAP benefits in the State of

Michigan on August 8, 2016 in which he stated he lived in Michigan. At that time, Respondent was also receiving food assistance benefits in [REDACTED]. Respondent's FAP benefit usage shows that Respondent began using his FAP benefits in [REDACTED] shortly after the [REDACTED], 2016 application was submitted. Respondent was clearly residing in the State of [REDACTED] at the time he completed the [REDACTED], 2016 application. As such, Respondent is subject to a 10-year disqualification.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. At the hearing, the Department established that the State of Michigan issued a total of \$240 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

As previously stated, it is evident from the record that Respondent was residing in [REDACTED] at the time he applied for Michigan FAP benefits. To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. Therefore, the Department has established it is entitled to recoup the \$240 in FAP benefits it issued to Respondent during the fraud period.

### **DECISION AND ORDER**

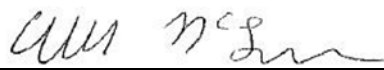
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program FAP benefits in the amount of \$240.

The Department is ORDERED to initiate recoupment procedures for the amount of \$240 in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a ten-year disqualification from FAP benefits.

EM/cg

  
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**Ellen McLemore**  
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) 335-6088; 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

**Via Email:**

MDHHS-Genesee-6-Hearings  
OIG Hearings  
Recoupment  
MAHS

**Respondent – Via First-Class Mail:**

