



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: November 27, 2018  
MAHS Docket No.: 18-009162  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████ ██████

**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 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 21, 2018, from Lansing, Michigan. The Department was represented by Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 52 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-52.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and/or Medicaid (MA) 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?

**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 August ██████ 2016, Respondent filed with the Department an application for benefits. Exhibit A, pp. 12-39.

2. On Respondent's application to the Department, Respondent indicated that he lived in Detroit, Michigan. Exhibit A, pp. 14.
3. Respondent further indicated on the application that he did not have any physical or mental disabilities. Exhibit A, pp. 15-16.
4. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, p. 21.
5. "Things You Must Do" advised Respondent that he was required to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, p. 22.
6. Respondent's application was approved, and the Department thereafter began issuing Respondent monthly FAP benefits and providing MA coverage. Exhibit A, pp. 48-50, 61-63.
7. On November [REDACTED] 2016, the State of Tennessee issued to Respondent a driver's license signifying a change in residence to Tennessee. Exhibit A, p. 58.
8. On November [REDACTED] 2016, Respondent used his FAP benefits in Michigan for the final time. Exhibit A, p. 43.
9. On or before November [REDACTED] 2016, Respondent connected utilities in his name at an address in Tennessee. Exhibit A, p. 56.
10. Starting December [REDACTED] 2016, Respondent's FAP benefits were used exclusively in Tennessee. The exclusive Tennessee use continued through at least August 8, 2017. Exhibit A, pp. 40-47.
11. On [REDACTED] [REDACTED] [REDACTED] Respondent registered a [REDACTED] in Tennessee. Exhibit A, pp. 59-60.
12. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by collecting FAP and MA benefits from Michigan after moving out of state.
13. This was Respondent's first alleged IPV.
14. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year.

15. The Department's OIG indicates that the time period it is considering the fraud period with respect to FAP benefits is December 1, 2016, through July 31, 2017 (fraud period), during which the Department issued Respondent \$ [REDACTED] in FAP benefits. The alleged fraud period with respect to MA is December 1, 2016 through August 31, 2017, during which the Department dispensed \$ [REDACTED] in MA benefits. Exhibit A, pp. 1-5, 48-50, 61-63.
16. 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), 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

The Department's position in this matter is that Respondent's failure to report his move out of state while continuing to be covered by Michigan's MA and use his Michigan issued EBT card amounted to an Intentional Program Violation (IPV) with respect to MA and FAP.

### **Overissuance**

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 2016), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was a Tennessee resident as of November 16, 2016, at the latest. This conclusion is based on the facts that Respondent's EBT card had primarily been used in Tennessee

for over one month before that date; he obtained a Tennessee driver's license on that date, for which he was required to certify Tennessee residency in order to receive; and he connected utilities in his name at an address in Tennessee. Bolstering that conclusion is the fact that Respondent's EBT card was exclusively used in Tennessee after November 26, 2016 and he subsequently registered a vehicle in Tennessee.

Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report his move to Tennessee, the Department issued for Respondent's benefit FAP benefits of \$ [REDACTED] and MA benefits of \$ [REDACTED]. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was \$ [REDACTED].

### **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 2016) 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; 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 met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he moved out of state within 10 days of the date he moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP and MA benefits since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing him FAP and MA benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

**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, pp. 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, p. 16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

**DECISION AND ORDER**

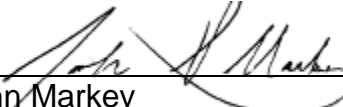
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$ [REDACTED] that the Department is entitled to recoup and/or collect.
2. The Department paid an overissuance of MA benefits in the amount of \$ [REDACTED] that the Department is entitled to recoup and/or collect.
3. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP and MA benefits.
4. Respondent is subject to a one-year disqualification from receiving FAP benefits.

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

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/nr

  
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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

**DHHS**

LaClair Winbush  
17455 Grand River  
Detroit, MI  
48227

Wayne 31 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

**Respondent**

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