



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: December 7, 2018  
MAHS Docket No.: 18-009619  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED] [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 December 5, 2018, from Lansing, Michigan. The Department was represented by Christopher Fechter, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and represented herself. During the hearing, 85 pages of documents were offered and admitted into evidence as Department's Exhibit A, pp. 1-85.

**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?

**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] 2012, Respondent submitted to the Department an application for FAP benefits. Respondent indicated on the application that her household consisted of herself and her two grandsons, [REDACTED] and [REDACTED] Exhibit A, pp. 12-51.

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 household income or job status within 10 days after the issuance of the 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. 32-33.
3. On June 13, 2016, the Department issued to Respondent a Redetermination, Form 1010, in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 52-57.
4. On July 11, 2016, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pp. 52-57.
5. On October 6, 2016, [REDACTED] still a member of Respondent's FAP group, began working for [REDACTED]. He received his first paycheck from [REDACTED] on October 14, 2016. [REDACTED] regularly worked at [REDACTED] from the date of hire until at least the end of May 2017. Exhibit A, pp. 58-60.
6. Respondent did not report [REDACTED] employment with or income from Red Lobster to the Department.
7. On [REDACTED] 2016, Respondent submitted to the Department an application for State Emergency Relief (SER). On the Household Income section of the SER application, Respondent indicated that the only income source in the household was Respondent's Social Security Disability of \$[REDACTED] per month. Respondent then answered "no" when directed to tell the Department "if there have been any charges or if you expect a change in your household income in the next 30 days." The application also had a section that required Respondent to fill in income information for her household for the previous six months. For each of the months, Respondent indicated that the only monthly household income was the \$[REDACTED] that she had previously identified as Social Security Disability. Exhibit A, pp. 61-64.
8. Respondent signed the SER application and thereby certified that all the information provided in the application was true to the best of her knowledge and that she would be subject to fraud proceedings against her if she gave false information. Exhibit A, p. 63.
9. On [REDACTED] 2016, Respondent submitted to the Department another application for SER. Again, Respondent certified that the only household income was her \$[REDACTED] in monthly SSI income. However, on this application, Respondent left blank the section that required her to fill in income information for the previous six months. Again, Respondent signed the SER application and thereby certified that all information provided in the application was true to the best of her knowledge

and that she would be subject to fraud proceedings against her if she gave false information. Exhibit A, pp. 65-68.

10. From December 1, 2016, through May 31, 2017, the Department issued Respondent \$2,515 of FAP benefits. Respondent's monthly benefit amount was calculated without taking into consideration [REDACTED] income from [REDACTED] Exhibit A, pp. 1-5, 72-85.
11. On September 18, 2018, the Department's OIG filed a hearing request to establish an IPV. Exhibit A, pp. 1-5.
12. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. Exhibit A, pp. 1-5.
13. The Department considers the alleged fraud period to be from December 1, 2016, through May 31, 2017. Exhibit A, pp. 1-5.
14. During the alleged fraud period, Respondent was issued \$2,515 of FAP benefits, and the Department believes Respondent was only entitled to \$784 during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$1,731.
15. 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 Department's position in this case is that Respondent committed an IPV with respect to FAP by failing to report that household member [REDACTED] was working at and earning income from [REDACTED] within ten days after receiving his first paycheck and by subsequently misrepresenting her household's income on the SER applications. Respondent testified that she properly reported the income.

### **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 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 the wages from [REDACTED] employment with [REDACTED], which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$1,731 of FAP benefits from December 1, 2016, through May 31, 2017.

### **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, 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 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 at the time of application and again reminded Respondent of the instructions during the redetermination process. Respondent failed to report that [REDACTED] became employed or had any income despite continuously working and receiving paychecks from October of 2016 through at least sometime in June of 2017.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, p. 9. On October 31, 2016, Respondent submitted an application for SER to the Department and certified that the only income in the household was her Social Security income. However, at that time, [REDACTED] was

working for [REDACTED] and was receiving consistent income. Respondent did the exact same thing two days later when she submitted another SER application. Thus, Respondent not only failed to timely report the change in income and employment, she affirmatively misrepresented her household income and employment status when filing subsequent documents with the Department.

Respondent appeared at the hearing and testified that she in fact did report the new employment to the Department and that she did not include [REDACTED] income on the SER applications because she knew it was going to be denied anyways. Respondent's testimony, however, was not credible. On the SER applications, Respondent repeatedly stated that the only income in the household was her Social Security income despite Respondent being aware that [REDACTED] was working at [REDACTED] and receiving income from that job. Respondent's statements on the SER were knowingly untruthful. The SER applications clearly and in bold print warned Respondent that she was signing the documents under penalty of perjury. She signed the documents, thereby certifying that the fraudulent information contained therein was truthful. I find that Respondent did not report [REDACTED] employment with or income from [REDACTED] to the Department at any time. Rather, the Department became aware of [REDACTED] employment entirely independent from Respondent.

Respondent's failure to report the income or employment change to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to recalculate and reduce her FAP benefits. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented her household's employment and income status on the subsequent SER applications. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement. The Department has proven by clear and convincing evidence that Respondent committed an intentional program violation.

### **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 indication in the record that Respondent was previously found guilty of 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**

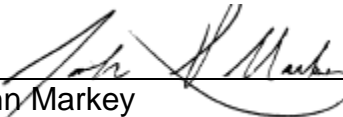
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,731 that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

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

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$1,731 established in this matter less any amounts already recouped or collected.

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**

Lindsay Miller  
125 E. Union St 7th Floor  
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Genesee Union St. County DHHS- via  
electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

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**Respondent**

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