

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-013663  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: June 16, 2015  
County: WAYNE-DISTRICT 35  
(REDFORD)

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on June 16, 2015. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. Participants on behalf of the Department of Human Services (Department) included RA [REDACTED].

**ISSUE**

Whether Respondent engaged in trafficking (attempted) Food Assistance Program (FAP) benefits and did Respondent's trafficking (attempted) result in a Food Assistance Program over-issuance of \$100?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- (1) Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. Respondent was issued the "How To Use Your Michigan Bridge Card" booklet at the same time as they were issued their Electronic Benefit Transfer Card. The booklet provided Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules.
- (2) On July 5, 2014, Respondent posted an offer on Craigslist to sell \$ [REDACTED] of Food Assistance Program benefits for \$ [REDACTED].
- (3) On October 15, 2014, the Office of Inspector General submitted the agency request for hearing of this case

## **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACR 400.3001-3015.

### **Intentional Program Violation (IPV)**

In this case, the Department has requested a disqualification hearing to establish that Respondent committed an Intentional Program Violation (IPV) by attempting to sell or buy Food Assistance Program benefits. The Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

### **BAM 720 INTENTIONAL PROGRAM VIOLATIONS (10-1-2014)**

#### **DEPARTMENT POLICY**

##### **All Programs**

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

#### **DEFINITIONS**

##### **Suspected IPV**

##### **FAP Only**

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

##### **IPV**

##### **FIP, SDA and FAP**

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

##### **FAP Only**

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

## **BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS (1-1-2015)**

### **FAP TRAFFICKING**

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. These FAP trafficking disqualifications are a result of the following actions:

Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or

Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

The Delegation of Hearing Authority issued to Michigan Administrative Hearing System by the Director of Michigan's Department of Health and Human Services' specifically states "Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy." Department policy, as cited above, provides only a broad and general definition of trafficking.

The definition of trafficking in 7 CFR 271.2 Definitions, includes "Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone."

In this case, the Department has presented evidence showing the posting on Craigslist and that the Craigslist account and associated Email address is Respondent's. This evidence constitutes clear and convincing evidence that Respondent attempted to sell Food Assistance Program benefits.

Department policy does not provide any specific guidance on criteria for, or the evidentiary standard when determining a trafficking Intentional Program Violation (IPV). 7 CFR 273.16 provides in part:

(c) Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using,

presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

(e)(6) Criteria for determining intentional Program violation states. The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

Regulation Agents from the Department's Office of Inspector General regularly assert that there is no requirement to show intent when presenting a trafficking charge in an Administrative Law Hearing. Michigan's lack of policy does not negate the federally established requirements as cited above. The federally established requirements are clear and convincing evidence that Respondent violated the Food Stamp Act or the Food Stamp Program Regulations and intended to violate the Food Stamp Act or the Food Stamp Program Regulations.

If a person intentionally commits an act, but they did not know the act violated a rule or regulation, they have accidentally violated the rule or regulation. To intentionally violate the rule or regulation the person must have knowledge of the rule or regulation. Black's Law Dictionary, Intent . . . being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. *State v. Walker*, 109W.Va. 351, 154 S.E. 866, 867. It presupposes knowledge. *Reinhardt v. Lawrence Warehouse Co.*, 41 Cal.App.2d 741, 107 P.2d 501, 504.

In this case the Department has submitted evidence which shows Respondent was a Food Assistance Program benefit recipient who possessed their own Electronic Benefit Transfer Card (EBT). All persons issued an EBT are also issued the "How To Use Your Michigan Bridge Card" booklet at the same time as they are issued their EBT. The booklet provided Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules. The Department has met its evidentiary burden of showing that Respondent intentionally, attempted to violate the Food Stamp Act or the Food Stamp Program Regulations.

### **Over-Issuance**

The Department also asserts that Respondent received a \$ [REDACTED] Food Assistance Program over-issuance caused by the Intentional Program Violation (IPV). Department policies provide the following guidance and are available on the internet through the Department's website.

### **BAM 720 INTENTIONAL PROGRAM VIOLATIONS (10-1-2014)**

## **OVER-ISSUANCE AMOUNT**

**FAP Trafficking** The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- Documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence.

In this case, the Department has presented evidence which only shows that Respondent attempted to traffic Food Assistance Program benefits. The Department policy cited above identifies the over-issuance amount for trafficking related IPV as the value of the **TRAFFICKED** benefits. Since there are no trafficked Food Assistance Program benefits, there is no Food Assistance Program, IPV over-issuance.

## **Disqualification**

The Department alleges this is Respondent's 1<sup>st</sup> Intentional Program Violation (IPV). Department policies provide the following guidance and are available on the internet through the Department's website.

### **BAM 720 INTENTIONAL PROGRAM VIOLATIONS (10-1-2014)**

#### **DISQUALIFICATION FIP, SDA, AND FAP**

Disqualify an active **or** inactive recipient who:

Is found by a court or hearing decision to have committed IPV.

Has signed a DHS-826 or DHS-830.

Is convicted of concurrent receipt of assistance by a court.

For FAP, is found by MAHS or a court to have trafficked FAP benefits.

#### **Standard Disqualification Periods FIP, SDA, and FAP**

The standard disqualification period is used in all instances except when a **court** orders a different period (see Non-Standard Disqualification Periods in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

One year for the first IPV.

Two years for the second IPV.  
Lifetime for the third IPV.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

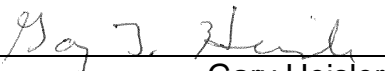
### **DECISION AND ORDER**


The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by clear and convincing evidence that Respondent attempted to engage in Food Assistance Program (FAP) trafficking.


Respondent did not succeed in trafficking Food Assistance Program benefits so there is no Food Assistance Program IPV over-issuance. The Department cannot pursue recoupment of any amounts in connection with this incident.

This is Respondent's 1<sup>st</sup> Food Assistance Program (FAP) Intentional Program Violation (IPV) and the Department may disqualify Respondent in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2013).

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHeld only in part.

  
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Gary Heisler  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: 

Date Mailed:  5

GFH / 

**NOTICE:** The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

