

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

**IN THE MATTER OF:**



Reg. No.: 15-006252  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: June 24, 2015  
County: JACKSON

**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 Health and Human Services' request. After due notice, a hearing was held on June 24, 2015. Respondent appeared by telephone and testified. Participants on behalf of the Department of Health and Human Services (Department) included RA [REDACTED].

**ISSUE**

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

**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 signed the affidavit in the April 9, 2014, Assistance Application (DHS-1171) certifying that he was aware of the conditions that constitute fraud/IPV and trafficking and the potential consequences. Respondent was also 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 June 21, 2014, Respondent was incarcerated and has been incarcerated since then to present.

- (3) Between July 9, 2014 and November 9, 2014 Respondent's Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card was used for transactions. Respondent's Food Assistance Program benefits were put on his EBT on the 9<sup>th</sup> of each month. The transactions on the EBT cleared the entire balance on the 9<sup>th</sup> of each month. The total of Respondent's trafficking transactions is \$ [REDACTED].
- (4) On April 28, 2015, 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.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of Food Assistance Program (FAP) trafficking and the Department has asked that Respondent be disqualified from receiving benefits. Respondent testified that his wallet was stolen from him in early April and his EBT card and PIN were in the wallet. Respondent testified that he did not report the incident to police because he was on the run from police at the time. Neither did Respondent go to the Department to report loss of the card and to get a replacement.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

Respondent's testimony is not found credible. The only plausible explanation for the facts is that Respondent sold or exchanged his EBT card and PIN.

Department policies provide the following guidance and are available on the internet through the Department's website.

## **BAM 720 INTENTIONAL PROGRAM VIOLATIONS**

### **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**

#### **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.

### **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.

### **DISQUALIFICATION**

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

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

Is found by a court or hearing decision to have committed IPV, **or**  
Has signed a DHS-826 or DHS-830, **or**

Is convicted of concurrent receipt of assistance by a court, **or**  
For FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive 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).

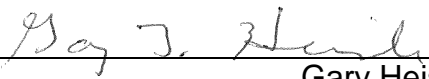
Apply the following disqualification periods to recipients determined to have committed IPV:

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV.

**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 engaged in Food Assistance Program (FAP) trafficking in the amount of \$ [REDACTED] which the Department is entitled to recoup. 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.

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

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

Date Signed: **7/1/2015**

Date Mailed: **7/1/2015**

GFH / [REDACTED]

**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:

