



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 1, 2016
MAHS Docket No.: 16-008147
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

AMENDED HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 18, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], 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).

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge Gary Heisler and mailed on October 20, 2016. That Hearing Decision is hereby **AMENDED** in order to include more specific information in the Findings of Fact and Conclusions of Law.

ISSUE

Whether Respondent engaged in trafficking Food Assistance Program (FAP) benefits in the amount 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) In 2012, [REDACTED] was under investigation by the USDA-FNS for trafficking Food Assistance Program (FAP) benefits. The investigation produced an analysis of the store's Electronic Benefit Transfer (EBT) card transactions, the inventory and mix of authorized items carried at the store, and the transaction records of similar stores in the same geographic area as the

store. The USDA-FNS investigation developed criteria for Electronic Benefit Transfer (EBT) card transactions at [REDACTED] that indicate trafficking. That criteria includes transactions which: are well above the location's average transaction amount; end in \$ [REDACTED] \$ [REDACTED] or \$ [REDACTED] (which is extremely rare and impossible to do if proper sales were taking place); occur on the same day and/or within minutes of each other; and/or bring the EBT card balance to zero.

- (2) Between January 1, 2012 and February 28, 2013, Respondent's Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card was used for transactions at [REDACTED]. Fifteen of the transactions match the criteria for trafficking established by the USDA-FNS investigation of [REDACTED]. The total of Respondent's trafficking transactions was \$ [REDACTED].
- (3) This Respondent's 1st Intentional Program Violation of the Food Assistance Program (FAP).

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

Bridges Administration Manual (BAM) 720 Intentional Program Violation governs the Department's actions in this case. It provides in relevant part:

FAP Only

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

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.

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.

INTENTIONAL PROGRAM VIOLATION (IPV) OF TRAFFICKING

The Department has submitted evidence showing that the USDA-FNS investigated [REDACTED]. The investigation included analysis of the store's Electronic Benefit Transfer (EBT) card transactions, the inventory and mix of authorized items carried at the store, the location's point of sale capabilities and the transaction records of similar stores in the same geographic area as the store.

The USDA-FNS investigation of [REDACTED] developed criteria for Electronic Benefit Transfer (EBT) card transactions that indicate trafficking. That criteria includes transactions which: are well above the location's average transaction amount; end in \$. [REDACTED] \$ [REDACTED] or \$. [REDACTED] (which is extremely rare and impossible to do if proper sales were taking place); occur on the same day and/or within minutes of each other; and/or bring the EBT card balance to zero.

The Department alleges that 15 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] made with Respondent's EBT, are trafficking transactions. All 15 of the transactions match the trafficking criteria revealed by the USDA-FNS investigation of [REDACTED]

Respondent was issued the "How To Use Your Michigan Bridge Card" booklet at the same time an Electronic Benefit Transfer Card was issued. The booklet provided Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules.

The evidence submitted by the Department constitutes clear and convincing evidence that Respondent committed, and intended to commit, an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED] at [REDACTED]

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

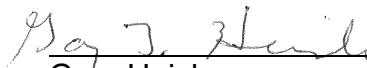
DECISION AND ORDER

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 in accordance with Department policies.

This is Respondent's 1st Food Assistance Program (FAP) Intentional Program Violation (IPV) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

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

GH/nr



Gary Heisler
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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]