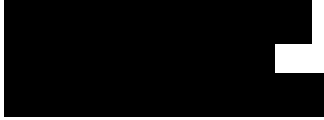




RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: February 17, 2017  
MAHS Docket No.: 16-010005  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

### **HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on February 8, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. [REDACTED] [REDACTED] ("Respondent") appeared in person and provided testimony.

### **ISSUES**

1. Did Respondent commit an Intentional Program Violation (IPV)?
2. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Should Respondent be disqualified from receiving Food Assistance Program (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. The Department's OIG filed a hearing request on April 12, 2016 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent received FAP benefits issued by the Department. [Exh. 1, pp. 10-15].
4. At the time Respondent was issued FAP benefits, he was provided with an EBT card and a confidential Personal Identification Number (PIN). The Department also gave Respondent instructions on his rights and responsibilities concerning the proper use of his FAP benefits, EBT card, and PIN. [Exh. 1, pp. 29-30, 31-48].
5. Respondent had a FAP group size of 1 at all relevant times. [Hearing Testimony].
6. On January 28, 2015, the Department received an anonymous hotline referral that alleged Respondent sells his FAP benefits to a barber shop owner with a phone number of [REDACTED]. [Exh. 1, p. 4].
7. The Department assigned an OIG agent to conduct an investigation of the hotline referral. [Exh. 1, p. 4].
8. The investigation revealed that the telephone number belonged to [REDACTED] Barber Shop located at [REDACTED]. [Exh. 1, pp. 4, 26-28].
9. Respondent reported that his EBT card was lost on July 11, 2015, and he received a new card within 7 days. [Hrg. Test.].
10. On January 25, 2015, Petitioner's Electronic Benefit Transfer (EBT) card was used by two women to purchase items at [REDACTED] located at [REDACTED]. [Exh. 1, pp. 18-19, 20-25].
11. The OIG contends that Respondent's EBT card was used at the [REDACTED] on January 25, 2015, and that based on the nature of the transaction, was used fraudulently and in a manner indicative of FAP trafficking.
12. Respondent was aware that it was unlawful to allow any third party to use his EBT card or to have his private, confidential PIN. [Exh. 1, pp. 34-40].
13. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food. [Exh. 1, pp. 29-30].
14. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern FAP benefits.
15. The Department's OIG indicates that the time period they are considering the fraud period is January 1, 2015, to January 31, 2015 (fraud period).

16. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
17. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]
18. This was Respondent's first alleged FAP IPV.
19. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the 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-.3011.

#### **Intentional Program Violation**

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (10-1-2016) p. 1.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, (1-1-2016) p. 1. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1.

A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act is guilty of trafficking. See 7 U.S.C. §§ 2011 to 2030, BEM 203, (10-1-2015) pp. 2-3, MCL 750.300a. This includes voluntary transfer of Electronic Benefit Transfer (EBT) or "Bridge" cards and/or FAP benefits to any person outside of the FAP group. FAP recipients cannot sell, trade, or give away their FAP benefits, Personal Identification Number (PIN) or Michigan EBT card. FAP benefits must be used by household members to purchase eligible food for the household. 7 C.F.R. §274.7.

FAP recipients are precluded from purchasing eligible food items on credit and paying for the items using their EBT or Bridge card. FAP benefits shall not be used to pay for any eligible food purchased prior to the time at which the EBT card is presented to the authorized retailer or used to pay for eligible food in advance of the receipt of the food. 7 C.F.R. §274.7.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203, pp. 2-3. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203, p. 3.

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) 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. BAM 720, p. 8. [Emphasis added].

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. If the court does not address disqualification in its order, the standard period applies. BAM 720, p.16.

### **Clear and Convincing Evidence**

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 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an IPV. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be

uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV because he engaged in FAP trafficking when he allegedly sold (or gave) his EBT card to the owner of the ██████████ Barber Shop located in ██████████. The Department's OIG submits that the telephone number from the anonymous tip matches the number for ██████████ Barber Shop. The Department OIG further alleges that Respondent's EBT transaction history shows that his EBT card was used at ██████████ on January 25, 2015, by two unidentified females. The Department OIG has offered photographs of EBT transaction at ██████████ by the women on January 25, 2015. Respondent, on the other hand, denies any involvement. He says that he does not know anyone from the ██████████ Barber Shop and said that he does not affiliate with ██████████. Respondent admitted that he had been drinking heavily at the time and lost his wallet. Respondent says that he reported that his EBT card was stolen, but he cannot recall when this happened. He says that he does not know the identity of the women in the photographs. Respondent also says that he did not act intentionally and that he cannot explain how his EBT card was used at ██████████ on the date in question.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

First, the undersigned notes that the anonymous tip fielded by the Department was that Respondent sold his EBT card to the owner of ██████████ Barber Shop ("the barber shop"). The individual who provided the tip indicated the telephone number of the barber shop. There is no dispute that the telephone number belonged to a barber shop. Although Respondent denies that he sold or gave his EBT card to the barber shop, the circumstances in this case demonstrates that Respondent transferred his EBT card and/or PIN to a third party, who used it to make purchases at ██████████ on January 25, 2015. [Exh. 1, pp. 17-18]. There is no dispute that the individuals who used Respondent's EBT card on the date in question had Respondent's private PIN when they made the purchases. The EBT card usage history shows that on January 25, 2015, Respondent's EBT card was "keyed" (designated by "K") rather than "swiped" (designated by an "S.") [Exh. 1, p. 18]. This case essentially becomes a credibility

question. This Administrative Law Judge does not believe Respondent's denials. Although the Department has not shown that Respondent physically delivered his EBT card to the owner of the barber shop, Respondent's insistence that he does not know the identity of the individuals who used his EBT card and that he used to drink a lot, is not credible. Although Respondent reported his EBT card was stolen, the evidence of record does not show that Respondent's EBT card was actually stolen. Nor does the evidence show that a third party just happened to discover Respondent's private PIN and used the EBT card to make the unauthorized purchases on January 25, 2015. In light of the anonymous tip, it is not by mere coincidence that Respondent's EBT card was used by a third party at a [REDACTED]. The more reasonable, and more probable scenario, is that Respondent knowingly transferred his EBT card and PIN to a third party in exchange for a benefit. The undersigned does not find that Respondent's version of events is logical or credible. The evidence does not show that Respondent's private PIN was stolen. This Administrative Law Judge finds that the clear and convincing evidence shows that Respondent knowingly transferred his EBT card and provided his private PIN to a third party without authorization for consideration other than eligible food.

Based on the above Findings of Fact, the Department has shown by clear and convincing evidence that Respondent's EBT card was used by a third party without authorization at [REDACTED] during the fraud period. [Exh. 1, pp. 17-18]. This supported by the record evidence which revealed that Respondent's EBT card was used for a fraudulent transaction during the fraud period. [Exh. 1, p. 18]. The record shows that Respondent knowingly used, transferred, acquired, altered, purchased, possessed, presented for redemption or transported FAP benefits or an EBT/Bridge card in violation of the federal food stamp act. The record also shows that Respondent received documentation which contained instructions regarding the lawful and proper use of the EBT card, PIN and FAP benefits. [Exh. 1, pp. 29-48]. Therefore, Respondent was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims.

This Administrative Law Judge finds that the evidence is clear and convincing that Respondent was guilty of FAP trafficking during the fraud period. Accordingly, the Department OIG Agent has established that Respondent committed an IPV with respect to the FAP program.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13.

An individual who is found guilty of a FAP IPV is disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Based on the Findings of Fact above, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits. The Department has also shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a total \$ [REDACTED] overissuance (OI), which is equal to the amount that was trafficked. The Department has also shown that this is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did commit an IPV due to FAP trafficking.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED that the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP benefits for a period of 12 months.

CAP/mc



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**C. Adam Purnell**  
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]