



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: March 27, 2017  
MAHS Docket No.: 16-016089  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki Armstrong

### **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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on [REDACTED] from Lansing, Michigan.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 20 exhibits which were admitted.

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). The record was closed at the conclusion of the hearing.

### **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 benefits for Food Assistance Program (FAP) for 12 months?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED] to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 12].
3. Respondent was aware of the responsibility to report that he was incarcerated to the Department and the policy against transferring his card to someone else to use.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. Respondent was arrested and incarcerated in the [REDACTED] on [REDACTED] through [REDACTED] [Dept. Exh. 10].
6. The FAP Purchase History shows purchases made with Respondent's EBT card from [REDACTED] through [REDACTED] [Dept. Exh. 13-15].
7. The Department submitted a FAP purchase history from [REDACTED] through [REDACTED] which did not support the Department's allegation of a fraud period from [REDACTED] through [REDACTED] [Dept. Exh. 3, 13-15].
8. The Department alleged Respondent received an OI of \$ [REDACTED] which was not supported by the FAP purchase history. [Dept. Exh. 13-15].
9. 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 Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.

- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
  - the total amount is less than \$500, and
    - the group has a previous IPV, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
    - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (1/1/2016)(Emphasis added).

#### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016).

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 of 1977, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id.*

In this case, the record evidence clearly shows that Respondent was incarcerated during the time frame of [REDACTED] through [REDACTED] when the Department alleges that Respondent's EBT card was used. However, the evidence presented of FAP purchases from [REDACTED] through [REDACTED] does not support an IPV

from [REDACTED] through [REDACTED]. The Department alleged that Respondent received an OI of \$ [REDACTED] as a result of trafficking his FAP benefits while imprisoned for the time frame of May 1, 2015 through January 31, 2016. However, the FAP purchase history submitted in support of the OI is from [REDACTED] through [REDACTED] and is well in excess of the alleged OI of \$ [REDACTED]. Therefore, the Department has not established by clear and convincing evidence that Respondent committed an IPV.

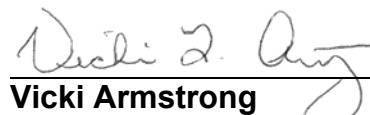
### **DECISION AND ORDER**

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

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.

The Department is ORDERED to delete the OI and cease any recoupment action.

VLA/bb



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**Vicki Armstrong**  
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]