



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: May 1, 2017  
MAHS Docket No.: 16-016127  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

**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 April 4, 2017, 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. Respondent signed a Request for Waiver of Disqualification Hearing (MDHHS-826) on October 10, 2016 so this hearing will not address the Intentional Program Violation (IPV) issue. Respondent DID NOT sign an Intentional Program Violation Repayment Agreement (MDHHS-4350) so a hearing must be conducted on the over-issuance amount caused by the uncontested Intentional Program Violation (IPV). The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

**ISSUE**

1. Did Respondent receive a \$ [REDACTED] Food Assistance Program (FAP) over-issuance (OI) of benefits that the Department is entitled to recoup?

**FINDINGS OF FACT**

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

1. From February 20, 2014 through April 9, 2014, IP address 107.134.144.228 belonged to [REDACTED] at [REDACTED] with a phone number of [REDACTED] and an email address of [REDACTED]
2. On March 6, 2014, Respondent submitted an online application for Food Assistance Program (FAP) benefits from IP address 107.134.144.228. Respondent gave [REDACTED] as his address and [REDACTED] as his telephone number. Respondent listed himself as the only member of the household. Respondent electronically signed the affidavit in the Assistance Application (DHS-1171) as "[REDACTED]" certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences. Respondent was issued Food Assistance Program (FAP) benefits from March 6, 2014 through December 31, 2014.
3. On March 26, 2014, an online application for Food Assistance Program (FAP) benefits was submitted from IP address 107.134.144.228 in the name of [REDACTED]. The application gave [REDACTED] as his address and [REDACTED] as his telephone number. The application listed [REDACTED] as the only member of the household. The application was electronically signed as "[REDACTED]" certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
4. On April 10, 2014, the Department case worker interviewed someone at telephone number (856) 469-9651 for Food Assistance Program (FAP) eligibility. The Food Assistance Program (FAP) application in [REDACTED] name was approved and Food Assistance Program (FAP) benefits were issued to an Electronic Benefit Transfer (EBT) Card in the name of Larry Santiago.
5. Between April 19, 2014 and September 11, 2014, \$[REDACTED] of the Food Assistance Program (FAP) benefits loaded onto the Electronic Benefit Transfer (EBT) Card in [REDACTED] name were spent.
6. On August 14, 2015, Respondent participated in an interview with Regulation Agent [REDACTED].
7. On September 29, 2016, the Department's Office of Inspector General filed this disqualification hearing request alleging that Respondent engaged in FAP trafficking by obtaining the Electronic Benefit Transfer (EBT) Card in [REDACTED] name and used some of the benefits applied to that EBT card.
8. On October 10, 2016, Respondent signed a Request for Waiver of Disqualification Hearing (MDHHS-826) on October 10, 2016 indicating "I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver request and understand that I will be disqualified from the program shown without a hearing." The waiver negates the need to conduct a hearing on the issue of whether Respondent committed an Intentional Program Violation (IPV). Respondent DID

NOT sign an Intentional Program Violation Repayment Agreement (MDHHS-4350) so the over-issuance amount still needs to be established.

### **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).

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 to .3015.

In this case, the Department requested a disqualification hearing to establish that Respondent committed an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits.

**Bridges Administration Manual (BAM) 700 Benefit Over-Issuances** defines trafficking as follows:

**Trafficking** is:

The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.

Selling products purchased with FAP benefits for cash or consideration other than eligible food.

Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

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

**DEFINITIONS ALL PROGRAMS**  
**Suspected IPV**

**Suspected IPV** means an over-issuance 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 their reporting responsibilities.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

**FAP Only**

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

**IPV**

**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.

In this case, the Department filed an Intentional Program Violation (IPV) hearing request alleging that Respondent engaged in FAP trafficking by obtaining the Electronic Benefit Transfer (EBT) Card in [REDACTED] name and used some of the benefits applied to that EBT card.

Respondent subsequently signed a Request for Waiver of Disqualification Hearing (MDHHS-826). When Respondent signed the waiver, he clearly marked the box which indicates "I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver request and understand that I will be disqualified from the program shown without a hearing."

The signed Request for Waiver of Disqualification Hearing (MDHHS-826) provides for the Department to apply a Food Assistance Program (FAP) disqualification to Respondent. It does not establish the facts alleged by the Department.

### **OVER-ISSUANCE AMOUNT**

As cited above, the over-issuance amount for trafficking-related IPV is the value of the trafficked benefits. The Department alleges that Respondent trafficked \$ [REDACTED] by using FAP benefits issued to an EBT card in the name of [REDACTED], which Respondent obtained via a fraudulent application. Respondent's waiver of the disqualification hearing relieves the Department of presenting evidence to prove he committed an Intentional Program Violation (IPV). However, the alleged amount trafficked, requires the Department to present evidence which shows that Respondent was the person who improperly used the EBT card in [REDACTED] name.

The evidence presented by the Department on that issue consists of the Regulation Agent's testimony and information recorded in the Investigation Report (Department's Exhibit A pages 4 & 5) which states in part:

Mr. [REDACTED] admitted that he knew P\_\_\_\_ T\_\_\_\_ and that she had apparently used his computer to submit fraudulent applications at his residence, [REDACTED] and that he had also used his computer to file a benefit application for himself. He also stated that [REDACTED] is his brother, however, he does not know where he is living now and could not provide a phone number for him. He stated that P\_\_\_\_ T\_\_\_\_ had submitted the application to MDHHS in the name of [REDACTED] without [REDACTED] knowledge and that his ([REDACTED]) phone number was used on the application. [REDACTED] admitted that he received the phone call from the caseworker conducting the phone interview for [REDACTED] and that he ([REDACTED]) had pretended to be [REDACTED] in order to complete the phone interview. Mr. [REDACTED] also admitted that he received the Bridge card for [REDACTED] and used the FAP benefits issued to [REDACTED] for several months. He said that after a few months he stopped using the [REDACTED] Bridge card because he knew it was wrong and cancelled the card. When confronted with the fact that the Bridge card had not been cancelled, Mr. [REDACTED] changed the story to say that he stopped using the card and burned it.

Admission of evidence during an Administrative Law Hearing on Department of Health and Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence.

However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence provide in part:

### **Rule 102 Purpose**

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

### **Rule 601 Witnesses; General Rule of Competency**

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

### **Rule 602 Lack of Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

### **Rule 801 Hearsay; Definitions**

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

### **Rule 802 Hearsay Rule**

Hearsay is not admissible except as provided by these rules.

### **Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

As applied to the Investigation Report in this record, the report is admissible under the hearsay exception as records of regularly conducted activity because the Department's Office of Inspector General's Regulation Agents perform investigations and issue investigation reports. However, the exception only extends to recorded statements that are part of the recorder's personal knowledge. The statements in the Investigation Report are admissible to prove what the Regulation Agent heard Respondent say. The recorder has recorded those statements based on his personal knowledge as a witness/participant in the interview.

The recorded statements are not admissible as evidence to prove that the recorded statements are true. The recorder of the statements does not have personal knowledge that the statements are true. The recorder only has personal knowledge of what he heard. This analysis is also applicable to the Regulation Agent's verbal testimony during the hearing.

The Department has not met its evidentiary burden of presenting competent evidence to show that Respondent trafficked \$ [REDACTED] of Food Assistance Program (FAP) benefits.

### **DECISION AND ORDER**

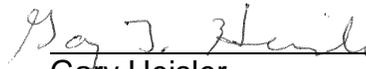
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that Respondent did not dispute the Department's Intentional Program Violation (IPV) charge and signed a Request for Waiver of Disqualification Hearing (MDHHS-826) on which he clearly marked the box which indicates "I do not admit that

the facts as presented are correct. However, I have chosen to sign this waiver request and understand that I will be disqualified from the program shown without a hearing.” Respondent’s waiver of the disqualification hearing allows the Department to apply a Food Assistance Program (FAP) disqualification to Respondent.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that Respondent did not sign an Intentional Program Violation Repayment Agreement (MDHHS-4350). The Department did not meet its evidentiary burden of presenting competent evidence to show that Respondent trafficked \$ [REDACTED] of Food Assistance Program (FAP) benefits.

The Department’s allegation that Respondent received a \$ [REDACTED] over-issuance of Food Assistance Program (FAP) benefits is NOT UPHOLD.

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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]