



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 2, 2017  
MAHS Docket No.: 16-017132  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Eric J. Feldman**

### **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 Detroit, 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).

### **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 FAP?

### **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 [REDACTED] 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
7. The Department alleges that Respondent trafficked \$ [REDACTED] in FAP benefits.
8. This was Respondent's first alleged IPV.
9. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the U.S. 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).

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.

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

- Willful overpayments of \$500 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 (January 2016), pp. 12-13; ASM 165 (August 2016), pp. 1-2.

### **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 (October 2016), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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 M Civ JI 8.01.

BAM 700 defines trafficking as:

- 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.

BAM 700, p. 2. Moreover, FAP trafficking includes fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2013), pp. 2-3.

The Department's argument against Respondent for trafficking FAP benefits is as follows:

- There exists a convenience store called [REDACTED] (hereinafter referred to as "Store 1"), where the United States Department of Agriculture ("USDA") conducted an investigation at Store 1 regarding food trafficking and determined that Store 1 was engaged in food trafficking and ultimately led to Store 1's permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store 1's layout and inventory makes it unlikely that someone would make multiple purchases of food in a short time period and/or excessively large purchase transactions;
- Store 1 had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area (Exhibit A, pp. 4 and 25);
- Clients received non-eligible items in exchange for their EBT card (Exhibit A, p. 5);

- Over a period of time, Respondent had high dollar and/or closely related transactions at Store 1, which is consistent with traditional trafficking patterns; and
- Thus, Respondent trafficked FAP benefits.

First, the Department presented evidence that Store 1 engaged in FAP trafficking, which resulted in Store 1's permanent disqualification from SNAP on [REDACTED]. Exhibit A, pp. 22-23.

Second, the Department argued that Store 1's layout and inventory makes it unlikely that someone would make multiple purchases of food in a short period of time and/or large purchases of food. Exhibit A, p. 4. In fact, the Department presented pictures of Store 1. Exhibit A, pp. 11-18.

Third, to establish that Respondent trafficked her FAP benefits at Store 1, the Department relied on Respondent's FAP transaction history. Exhibit A, pp. 49-50. For example, on [REDACTED], Respondent made four purchase within 11 minutes totaling \$ [REDACTED] Exhibit A, p. 49. Also, on [REDACTED], Respondent made a large purchase for an even \$ [REDACTED] Exhibit A, p. 50. Respondent repeated this irregular pattern of conducting large transactions and/or closely related transactions spent at Store 1. Exhibit A, pp. 49-50.

Fourth, the OIG Investigation Report (OIG report) indicated that Respondent appeared for the scheduled interview with the agent on [REDACTED], and reported the following (with the assistance of a caseworker for translation): (i) she only has access to a wheel chair for mobility; (ii) she denied allowing anyone to use her EBT card; (iii) she recalled shopping at Store 1 and admitted that the store was very small in size, which required her to leave her electric wheelchair outside the store when she went in; (iv) she claimed to purchase food items such as "a cookie"; (v) she maintained that she only bought food from the store and denied receiving cash for her card or purchasing nonfood items; (vi) the agent questioned her how she carried out \$ [REDACTED] worth of "food" from Store 1, and she claimed that she used two reusable grocery bags from [REDACTED] and put them on her wheelchair; (vii) the agent questioned her how she was able to purchase the items as there were no hand baskets or carts, and she stated that an employee there helped her but was not able to name him or describe him/her; (viii) she recalled that the store had a barrier at checkout; and (ix) she stated that the store clerk must have stolen her personal identification number (PIN) from her and used the card without the consent. Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has established by clear and convincing that Respondent committed an IPV involving her FAP benefits.

First, Respondent argued to the agent during her interview on [REDACTED], that she did not traffick her FAP benefits. For example, when the OIG agent questioned her how she carried out \$ [REDACTED] worth of "food" from Store 1, she claimed that she used two

reusable grocery bags from ██████ and put them on her wheelchair. Exhibit A, p. 4. However, the undersigned Administrative Law Judge (ALJ) finds Respondent's arguments highly suspicious and not persuasive. Respondent was unable to provide a persuasive argument as to why her large transactions, such as \$█████ or \$█████ were legitimate purchases because the transactions were excessive for a store of this size, type, and inventory. Exhibit A, pp. 49-50. Based on the credible evidence and testimony provided by the OIG agent, the undersigned finds that the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits at Store 1.

Second, the evidence established that Store 1 did not have the food items or the physical means to support Respondent's large transactions and/or closely related transactions spent at Store 1. Exhibit A, pp. 4 and 11-18.

Third, the Department's main argument was based on her FAP transaction history, which presented persuasive evidence that Respondent committed an IPV involving her FAP benefits. As shown above, the Department presented transactions that were highly suspicious because Respondent conducted large transactions and/or closely related transactions at Store 1, which was excessive for a store of this size, type, and inventory. Exhibit A, pp. 49-50. As such, Respondent's transactions that were conducted at Store 1 is consistent with traditional trafficking patterns. Therefore, the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits at Store 1.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (October 2016), p. 1. Clients are disqualified for 10 years for an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

For FAP trafficking, the amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) 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.

BAM 720, p. 8

As stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. As such, the undersigned finds that Respondent received an OI of program benefits in the amount of [REDACTED] from the FAP program. See BAM 720, p. 8.

### **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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$ [REDACTED]

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

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

EJF/jaf



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**Eric J. Feldman**  
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



**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]