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: June 8, 2017
MAHS Docket No.: 16-010838
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 of the responsibility that trafficking of benefits is unlawful and a violation of Department policy and could result in a disqualification from receipt of future Food Assistance and recoupment of 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. During the fraud period, Respondent was issued $[redacted] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to $[redacted] in such benefits during this time period.

8. The Department has alleged that Respondent trafficked her FAP benefits during the fraud period.

9. The Department alleges that Respondent received an OI in FAP benefits in the amount of $[redacted]

10. This was Respondent's **first** alleged IPV.

11. 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 (1/1/16), p. 12-13**.**

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.

The federal Food Stamp regulations read in part:

> (c) *Definition of Intentional Program Violation*. Intentional Program Violation shall consist of having intentionally:
>
> (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
>
> (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).
>
> 7 CFR 273.16(c)(1) and (2).

Trafficking means:

> (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
>
> (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
>
> (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

> (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
>
> (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
>
> (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2 and see also BAM 700, p. 2 (definition of trafficking) and BEM 203 (July 2014), pp. 3-4 (FAP trafficking disqualifications are a result of the following actions: 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).

In this case, the Department alleged that Respondent trafficked FAP benefits at the [redacted] (Market) in [redacted] Michigan. The Market was raided by the Federal USDA investigators and ultimately disqualified from being in the Supplemental Nutrition Assistance Program (SNAP) food assistance program on [redacted]. Exhibit A, p. 77. The Department presented the Respondent's Electronic Benefit Transfer (EBT) card purchase history which revealed numerous transactions at the Market that were large and deemed excessive, given the store's stock of food goods. Many of the purchases were very high-dollar amounts given a store of this size. Exhibit A, p. 25. Throughout this period, [redacted], Respondent received FAP benefits. Exhibit A, pp. 12-20.

The Department presented as evidence a series of purchases made by the Respondent in very large amounts. The Department excluded transactions of less than $[redacted] in its determination of what it considered trafficking, so all of the purchases considered and presented as trafficking were over that amount. The largest transaction was for $[redacted] made [redacted], and four purchases in the amount of $[redacted] during [redacted]. Exhibit A, p. 25. Pictures of the store were presented which included pictures of expired food stock and limited meat selections. It does appear highly unlikely that the Respondent could have spent such large sums at the store for food. Also presented was an extensive affidavit given by the Special Agent in charge of the investigation for the U.S Department of Agriculture. The affidavit was prepared to support the Government's application for issuance of warrants to search

three locations including the Market in [redacted] Michigan. Exhibit A, p. 82. The investigation began in [redacted] involving undercover police officers and informants which detailed in recorded transactions how the trafficking occurred based upon undercover purchaser's actual transactions. Exhibit A, p. 88. In a series of undercover transactions, EBT cards were debited; and cash was paid by the employees of the Market at a discounted rate. Exhibit A, pp. 88, 89-93.

A review of Respondent's entire EBT purchases demonstrates that many of the purchases made at larger supermarkets such as [redacted] or [redacted] were in the $[redacted] range or smaller amounts and did not approach anywhere near the large-dollar amounts listed earlier for the Market. The only other large purchase was at a [redacted] for $[redacted] in [redacted]. Exhibit A, p. 29. In addition, there were large grocery stores available for shopping within two minutes of the Market including [redacted] and [redacted]

Pictures of the store also show a convenience store setup with no checkout except at the front counter demonstrating that it would be difficult to make such large-dollar-amount purchases. Exhibit A, p. 97.

For FAP trafficking, the OI amount for trafficking-related IPVs 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.

BAM 720, p. 8.

As stated above, it is determined that the Department has established that Respondent committed an IPV involving FAP benefits. Furthermore, the evidence established that Respondent used her EBT card for such large transaction amounts that it would be difficult, given the food available, to make such purchases from the store. The evidence established that the value of the trafficked benefits is $[redacted]

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. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a 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/she 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 of her 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 entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1.

For FAP trafficking, the OI amount for trafficking-related IPVs 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.

BAM 720, p. 8.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving FAP benefits. Furthermore, the evidence established that the value of the trafficked benefits is $[redacted] and that the Department is entitled to recoup this amount. See BAM 700, p. 1, and 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 program benefits in the amount of $[redacted] from the following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of $[redacted] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance benefits for a period of **12 months**.

LMF/jaf

Lynn M. Ferris
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]

Respondent

[redacted]

DHHS

[redacted]