



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Julie A. McMurtry  
Interim Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: July 26, 2017  
MAHS Docket No.: 17-005729  
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, 42 CFR 431.230(b), 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 United States Postal Service 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 \$500.00 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 \$500.00 or more, or
  - the total amount is less than \$500.00, 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 166 (January 2017), pp. 1-8.

### **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.

In the present case, the OIG agent testified that Respondent is responsible for \$ [REDACTED] in unauthorized FAP transactions from [REDACTED], related to a trafficking scheme associated with [REDACTED] and [REDACTED]. [Exhibit A, p. 1.] The OIG Investigation Report (OIG report) indicated that in [REDACTED], an OIG agent was contacted by an asset protection agent from a [REDACTED] located in [REDACTED] Michigan, advising he observed [REDACTED], the owner of [REDACTED], conducting bulk commercial food item purchases with multiple Bridge Cards through his [REDACTED] business membership and provided video and receipt documentation of the transactions. [Exhibit A, p. 4.]

On an unspecified date, the OIG report indicated that the OIG agent contacted Walmart corporate security and obtained documentation of the Electronic Benefit Transfer (EBT) transactions performed through the [REDACTED] [REDACTED] [REDACTED] membership and discovered multiple Bridge Cards belonging to 35 recipients had been used through the account. [Exhibit A, p. 4.] The OIG report indicated that [REDACTED] was using the Bridge Cards to purchase stock merchandise for [REDACTED]. [Exhibit A, p. 4.]

On [REDACTED], the OIG report stated that the OIG agent and a United States Department of Agriculture (USDA) agent interviewed [REDACTED]. [Exhibit A, p. 4.] The OIG report indicted the following: (i) [REDACTED] confessed that he has exchanged Bridge Card FAP benefits for cash at [REDACTED]; (ii) he stated that he often helps out his customers when they have a cash need, such as paying their rent or phone and utility bills; (iii) he said he did other favors in exchange for the FAP benefits, including using Bridge Cards through his [REDACTED] membership and also at [REDACTED] and [REDACTED] as repayment of debts; (iv) he stated that he personally used the Bridge Cards and that the recipient cardholders were not present for the transactions; (v) he also stated the amount of cash that would be exchanged for FAP benefits, for example, could be 50 cents for every \$1.00 in FAP benefits; and (vi) he agreed that transactions of \$30.00 and above are large for his store and that many of those transactions included payment

of charge accounts. [Exhibit A, p. 4.] In fact, [REDACTED] signed an affidavit on [REDACTED] in which he stated the following: (i) he owned and operated [REDACTED] since [REDACTED]; (ii) he helped his customers by giving them cash in exchange for FAP benefits or a debt; and (iii) he has taken the EBT cards from different customers and have used them to purchase food inventory from [REDACTED], [REDACTED] and [REDACTED] [Exhibit A, pp. 94-95.]

As part of the evidence record, the Department presented Respondent's transactions that the Department argued amounted to trafficking: (i) \$ [REDACTED] on [REDACTED], at [REDACTED] (ii) \$ [REDACTED] on [REDACTED], at [REDACTED]; (iii) \$ [REDACTED] on [REDACTED], at Sam's Club; (iv) \$ [REDACTED] on [REDACTED], at [REDACTED]; (v) \$ [REDACTED] on [REDACTED], at ALDI; (vi) \$ [REDACTED] on [REDACTED], at [REDACTED]; and (vii) \$ [REDACTED] on [REDACTED] [REDACTED] at [REDACTED]. [Exhibit A, pp. 66-73.]

It should be noted that the OIG report indicated that the agent spoke with Respondent on [REDACTED], in which the following was documented: (i) Respondent confessed that he received cash at [REDACTED] in exchange for his Food Stamp benefits; (ii) he received 50 cents in cash for each \$1.00 in food stamps; (iii) he also stated that he bought ineligible items with his Food Stamps at [REDACTED], including cigarettes, cigars, alcohol and personal products; and (iv) he stated that he always dealt with the store owner and said that, since his Bridge Card is messed up, the store owner wrote down his card number and personal identification number (PIN). [Exhibit A, p. 5.]

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

First, in regards to transactions "ii; iii; iv; vi; and vii" conducted at [REDACTED], the undersigned finds that Respondent trafficked his FAP benefits for this amount. As part of the evidence record, the Department presented the transaction receipts from [REDACTED] and the specific items that were purchased using Respondent's EBT card ending in [REDACTED] for these transactions. [Exhibit A, pp. 74-75.] Included with the transaction receipt was a "Membership Number" that belonged to [REDACTED] business membership. [Exhibit A, pp. 74-75 and 92-93.] Basically, what this evidence shows is that Respondent's transactions at [REDACTED] were purchased through [REDACTED] business membership. The undersigned finds that this evidence supports the Department's argument that [REDACTED] conducting bulk commercial food items purchases with other individuals Bridge Cards, including Respondent's, through his [REDACTED] business membership. [Exhibit A, p. 4 and 74-75.] And furthermore, the OIG report and [REDACTED] affidavit showed how he bought or sold individuals, including Respondent's, FAP benefits for cash or consideration other than eligible food and then used their Bridge Cards through his [REDACTED] membership. [Exhibit A, pp. 4-5 and 74-75.] Based on the transaction receipt from [REDACTED], [REDACTED] confession, and Respondent's confession, the evidence is persuasive to show that Respondent received cash or consideration other than eligible food for his FAP benefits and then [REDACTED] used Respondent's EBT card to make the purchases through his [REDACTED] business membership. Therefore, the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits at [REDACTED].

Second, in regards to transactions “v” that was conducted at ██████ the undersigned finds that Respondent trafficked his FAP benefits for this amount. Based on ██████ confession, similar to the ██████ transactions, he also acknowledged that he used EBT cards to purchase food inventory from ██████ [Exhibit A, pp. 4-5 and 94-95.] As such, the evidence is persuasive to show that Respondent received cash or consideration other than eligible food for his FAP benefits and then ██████ used Respondent’s EBT card to make the purchases at ██████ Therefore, the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits from ██████

Third, in regards to transactions “i,” the undersigned finds that the Department failed to establish by clear and convincing evidence that Respondent trafficked his FAP benefits for this amounts. There was no evidence showing ██████ admitted and/or confessed to trafficking FAP benefits at ██████ As such, the Department failed to establish by clear and convincing evidence that Respondent trafficked his FAP benefits for transactions “i.”

### **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 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 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 entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

For FAP trafficking, the amount for trafficking-related IPVs 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 his 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 reduce the OI to \$ [REDACTED] for the period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy, less any amount already collected and/or recouped.

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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

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