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]

Date Mailed: July 26, 2017
MAHS Docket No.: 17-002152
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], the 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 [redacted] corporate security and obtained documentation of the Electronic Benefit Transfer (EBT) transactions performed through the [redacted] membership and discovered multiple Bridge Cards belonging to 35 recipients had been used through the account. [Exhibit A, p. 4.] The OIG agent 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 in FAP benefits; and (vi) he agreed that transactions of $30 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. 72-73.]

As part of the evidence record, the Department presented two of Respondent's transactions that the Department argued amounted to trafficking: (i) $[redacted] on [redacted], at [redacted]; and (ii) $[redacted] on [redacted], at [redacted] [Exhibit A, p. 50.]

It should be noted that the OIG agent testified that Respondent spoke with him on [redacted], in which she reported that she did not perform the transactions at issue, but did allow an ex-boyfriend to use her Bridge Card (he was not a member of the household).

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, the undersigned does not find Respondent's argument credible that she did not conduct the transactions. Respondent failed to be present at the hearing nor did she provide any documentation to the OIG agent to rebut the Department's argument. Instead, the undersigned finds the Department's argument persuasive that Respondent is involved in the trafficking scheme associated with [redacted] and [redacted].

Second, in regards to the $[redacted] transaction conducted at [redacted], the undersigned finds that Respondent trafficked her FAP benefits for this amount. As stated above, [redacted] admitted to the trafficking scheme by his signed affidavit on [redacted]. [Exhibit A, pp. 72-73.] Furthermore, the OIG report documented that [redacted] agreed that transactions over $[redacted] and above are large for his store and that many of those transactions included payment of charge accounts. [Exhibit A, p. 4.] The Department further argued that his $[redacted] was excessive for a store of this size, type, and inventory. [Exhibit A, pp. 4-5.] The Department presented evidence showing that the store did not have the food items or the physical means to support Respondent's $[redacted] transaction. [Exhibit A, pp. 4-5 and 76-88.] As such, based upon the store's size, type, inventory, and the confession of [redacted], the evidence is persuasive to conclude that Respondent's $[redacted] transaction conducted at the store was consistent with traditional trafficking patterns. Therefore, the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits.

Third, in regards to the $178 transaction conducted at [redacted], the undersigned finds that Respondent trafficked her FAP benefits for this amount. As part of the evidence record, the Department presented the $[redacted] transaction receipt from Sam's [redacted] and the specific items that were purchased using Respondent's EBT card ending in [redacted] on [redacted]. [Exhibit A, pp. 52-53 and 55.] Included with the transaction receipt was a "Membership Number" that belonged to [redacted] business membership. [Exhibit A, pp. 52 and 70-71.] Basically what this evidence shows is that Respondent's transaction of $[redacted] on [redacted], was purchased through [redacted] business membership. The undersigned finds that this

evidence supports the Department's argument that [redacted] was conducting bulk commercial food items purchases with other individuals Bridge Cards, including Respondent's, through his [redacted] business membership. [Exhibit A, p. 4 and 70-71.] 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 72-73.] Based on the transaction receipt from [redacted] and [redacted] 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 $[redacted] purchase through his [redacted] business membership. As such, Respondent is responsible for this unauthorized FAP transaction related to the trafficking scheme associated with [redacted] and [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; 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 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

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]

Respondent [redacted]