



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: July 25, 2017  
MAHS Docket No.: 17-006483  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on July 18, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. 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 Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

**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 April 19, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was incarcerated in the [REDACTED] from September 19, 2015, to April 11, 2016. [Exh. 1, p. 12].
4. Respondent was a recipient of FAP benefits issued by the Department during the time period that he was incarcerated. Respondent had a FAP group size of 1 at all relevant times. [Exh. 1, pp. 15, 22.].
5. The OIG contends that Respondent's Electronic Benefit Transfer (EBT) card was used fraudulently by an unauthorized individual while Respondent was incarcerated, which consists of FAP trafficking. [Exh. 1, pp. 23-25].
6. Respondent was aware that it is unlawful to voluntarily transfer an EBT, Michigan "Bridge" cards and/or FAP benefits to any person outside of the FAP group. Respondent also knew that it is unlawful to sell, trade, or give away his FAP benefits, personal identification number (PIN) or Michigan EBT card to an unauthorized person. FAP benefits must be used by household members to purchase eligible food for the household. [Exh. 1, pp. 23-25].
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern the use of FAP benefits.
8. The Department's OIG indicates that the time period they are considering the fraud period is September 1, 2015, through November 30, 2015 (fraud period).
9. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
10. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]
11. At the hearing, the Department OIG agent alleged that Respondent also received an OI of FAP benefits in the amount of \$ [REDACTED] after he allegedly purchased a soda pop with his Electronic Benefit Transfer (EBT) card, emptied the contents and then returned the bottles and/or cans for a refund. The alleged fraud period for this allegation is July 1, 2016, through July 30, 2016.
12. This was Respondent's first alleged FAP IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

## **CONCLUSIONS OF LAW**

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the 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-.3011.

### **Intentional Program Violation**

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (10-1-2016) p. 1.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, (1-1-2016) p. 1. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. However, "[a] person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act is guilty of trafficking." See 7 U.S.C. §§ 2011 to 2030, BEM 203, (10-1-2015) pp. 2-3, See also MCL §750.300a. This includes voluntary transfer of Electronic Benefit Transfer (EBT) or "Bridge" cards and/or FAP benefits to any person outside of the FAP group. FAP recipients cannot sell, trade, or give away their FAP benefits, personal identification number (PIN) or Michigan EBT card. FAP benefits must be used by household members to purchase eligible food for the household. 7 C.F.R. §274.7.

FAP recipients are precluded from purchasing eligible food items on credit and paying for the items using their EBT or Bridge card. FAP benefits shall not be used to pay for any eligible food purchased prior to the time at which the EBT card is presented to the authorized retailer or used to pay for eligible food in advance of the receipt of the food. 7 C.F.R. §274.7.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203, pp. 2-3. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203, p. 3.

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. If the court does not address disqualification in its order, the standard period applies. BAM 720, p.16.

### **Clear and Convincing Evidence**

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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an IPV. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV because he, during the above fraud period, engaged in FAP trafficking by voluntary transferring an EBT, Michigan "Bridge" cards and/or FAP benefits to a person outside of the FAP group. The Department's OIG also argues that Respondent sold, traded, or gave away his FAP benefits, personal identification number (PIN) or Michigan EBT card to an unauthorized person. The Department OIG further alleges that Respondent received an OI of FAP benefits as a result.

At the hearing, the Department's OIG Agent further alleged that Respondent was guilty of trafficking when he purchased soda using an EBT card with the express intent of

emptying the contents to obtain a refund. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

#### Trafficking: unauthorized EBT card use while incarcerated

Based on the above Findings of Fact, the Department has shown by clear and convincing evidence that Respondent's EBT card was used while he was incarcerated during the above fraud period. [Exh. 1, pp. 15, 23-25]. This supported by the Respondent's EBT card usage history contained in the record. [Exh. 1, p. 15]. The Department has shown by clear and convincing evidence that Respondent knowingly used, transferred, acquired, altered, purchased, possessed, presented for redemption or transported food stamps or coupons or access devices other than as authorized by the food stamp act. See 7 U.S.C. §§ 2011 to 2030, BEM 203, pp. 2-3, and MCL §750.300a. The Department has shown that Respondent voluntarily transferred or gave his Michigan-issued EBT card ("Bridge card"), PIN or FAP benefits to an unauthorized person who was outside of the outside of the FAP group. The Department has also shown on the whole record that Respondent was aware that FAP benefits must be used by household members to purchase eligible food for the household.

This Administrative Law Judge finds that the evidence is clear and convincing that Respondent was guilty of FAP trafficking during the fraud period. Accordingly, the Department OIG Agent has established that Respondent committed an IPV with respect to the FAP program.

#### Trafficking: "pop dumping"

The record does not show by clear and convincing evidence that Respondent purchased soda cans and/or bottles using his EBT card. The Department provided only an IG-311 EBT history report which indicated that purchases were made at [REDACTED] and [REDACTED] in [REDACTED] [REDACTED] on July 7, 2016. [Exh. 1, p. 26]. The record also contains copies of receipts for purchases made on this date. [Exh. 1, pp. 27-28]. However, the evidence is not clear and convincing that Respondent purchased

soda and then promptly dumped the contents of the soda and then returned the can and/or bottles to a store for a refund. These allegations are not supported by clear and convincing evidence on the record. Here, the Department has not shown that Respondent's alleged conduct met the definition of trafficking and; as a result, have not shown the presence of an IPV in this regard.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13.

An individual who is found guilty of a FAP IPV is disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Based on the Findings of Fact above, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits due to trafficking arising out of the improper use of his EBT card while he was incarcerated. The Department has not shown that Respondent was guilty of the practice known as "pop dumping." The Department has also shown that Respondent received an OI of FAP benefits during the time he was incarcerated. According to BAM 700, the Department may recoup this OI.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a total \$ [REDACTED] overissuance. However, the Department has not shown that Respondent received the alleged \$ [REDACTED] OI due to the alleged "pop dumping." The Department has also shown that this is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did commit an IPV due to FAP trafficking due to improper EBT card usage while incarcerated, but did not commit an IPV due to FAP trafficking arising out of the practice of "pop dumping."
2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED]
3. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department may not initiate recoupment procedures in the alleged FAP OI amount of \$ [REDACTED] because the alleged \$ [REDACTED] FAP OI was not established by clear and convincing evidence.

IT IS FURTHER ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] for the period of September 1, 2015, through November 30, 2015, in accordance with Department policy.

IT IS FURTHER ORDERED THAT that Respondent be disqualified from FAP benefits for a period of 12 months.

IT IS SO ORDERED.

CAP/md



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**C. Adam Purnell**  
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]

**DHHS**

[REDACTED]

**Respondent**

[REDACTED]