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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: July 21, 2017  
MAHS Docket No.: 17-006719  
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] 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, by clear and convincing evidence, 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 requested a hearing on April 21, 2017, to establish that Respondent received an OI of benefits as a result of having allegedly committed an IPV.

2. Respondent applied for and received FAP benefits issued by the Department. [Exhibit 1, pp. 18-20].
3. Respondent was aware of the responsibility to provide the Department with correct and complete information about himself and everyone in the household. Respondent was also aware of the requirement to report changes as required by applicable Department policy and/or law. [Exh. 1, pp. 21-24 & 25-30].
4. Respondent failed to report to the Department that he had two or more drug felony convictions that occurred after August 22, 1996. [Exh. 1, pp. 13-14, 21-24 & 25-30].
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 first fraud period is from January 1, 2016 to April 30, 2016 (fraud period).
7. During the alleged 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. [Exh. 1, pp. 18-20].
8. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
9. Respondent was incarcerated in the [REDACTED] from September 25, 2015, to January 1, 2016. [Exh. 1, p. 12].
10. Respondent was a recipient of FAP benefits issued by the Department during the time period that he was incarcerated. [Exh. 1, pp. 18-20].
11. 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.
12. 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 was also aware 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. 21-24 & 25-30].
13. The Department's OIG indicates that the time period it is considering the second fraud period is from October 1, 2015, to January 30, 2016 (fraud period).

14. During the alleged 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. [Exh. 1, pp. 18-20].
15. This was Respondent's first alleged FAP IPV.
16. The OIG has requested that Respondent be disqualified from receiving program benefits.
17. 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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 resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
  - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**
  - the total OI 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.

See BAM 720, p. 12.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

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**

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. 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.*

In this case, the Department alleges that Respondent committed an IPV when he failed to properly report to the Department that he had two or more felony drug convictions in order to receive an OI of FAP benefits. Respondent did not appear at the hearing.

Department policy provides that an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996. BEM 203 (10-1-2015), p. 2. [Emphasis added].

Department policy also requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (7-1-2015), pp. 10-11. Specifically, benefit recipients must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

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.

Based upon the above Findings of Fact, Respondent has two or more felony drug convictions that occurred after August 22, 1996. [Exh. 1, pp. 13-14]. The record shows that Respondent failed to properly report these felony drug convictions to the Department in order to receive FAP benefits. [Exh 1, pp. 21-24 & 25-30]. Respondent was advised of his rights and responsibilities concerning program benefits. [Exh 1, pp. 21-24 & 25-30]. Respondent's signature on the redetermination forms in the record certifies that he was aware of these rights and responsibilities. [Exh. 1, pp. 21-24 & 25-30]. Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting responsibilities. Accordingly, this Administrative Law Judge finds that the clear and convincing evidence on the whole record shows that Respondent committed an IPV because he intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

In addition, the Department's OIG Agent contends that Respondent is guilty of an IPV because he, during the second fraud period, engaged in FAP trafficking by voluntarily 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. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

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, p. 12]. This supported by the Respondent's EBT card usage history contained in the record. [Exh. 1, pp. 18-20]. 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.

### **Disqualification**

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is "[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor." BPG, p. 20. A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

A disqualification period is defined as, "[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist." BPG, p. 20. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. Clients are 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. However, as indicated above, a person who is convicted of a felony for the "use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996." BEM 203, p. 2.

In the instant matter, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent is personally disqualified from FAP benefits for one year.

### **Overissuance**

The Department must also show that Respondent received an overissuance (OI) of FAP benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (1-1-2016) p. 1. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p. 5.

In this matter, the Department has shown that Respondent received an OI of FAP benefits due to an IPV. [Exh. 1, pp. 18-20]. Based on the above Findings of Fact and Conclusions of Law, the OI resulted because Respondent received \$ [REDACTED] in FAP benefits, but was lawfully entitled to receive \$ [REDACTED] during the first fraud period indicated above. This resulted in an OI of FAP benefits in the amount of \$ [REDACTED]. In addition, the above Findings of Fact and Conclusions of Law above indicate that Respondent received an OI of FAP benefits during the second fraud period in the amount of \$ [REDACTED]. The total FAP OI for both fraud periods is \$ [REDACTED]. According to BAM 700, the Department may recoup this OI.

### **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. Respondent did commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED] (\$ [REDACTED] + \$ [REDACTED]).

IT IS ORDERED THAT the Department may initiate recoupment procedures for the total amount of \$ [REDACTED] in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of 12 months due to the first established IPV violation in the instant matter.



IT IS FURTHER ORDERED that Respondent's permanent and/or lifetime disqualification from FAP benefits also remains in effect due to Respondent having two or more drug felonies that occurred after August 22, 1996.

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]