



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: August 22, 2017  
MAHS Docket No.: 17-002845  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on August 2, 2017, from Lansing, 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 the Respondent committed 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. On a Redetermination (DHS-1010) form received by the Department on March 27, 2015, Respondent acknowledged his duties and responsibilities including the duty to use Food Assistance Program (FAP) benefits in a manner consistent with the Food and Nutrition Act of 2008. Exhibit A, pp 21-26.

2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. Petitioner was a Food Assistance Program (FAP) from July 1, 2015, through September 30, 2015. Exhibit A, p 14.
4. On September 8, 2015, Respondent reported to the Department that his Food Assistance Program (FAP) benefit card had been lost. Exhibit A, p 13.
5. The Department's OIG filed a hearing request on February 21, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
6. On February 21, 2017, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-10.
7. This was Respondent's first established IPV.
8. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (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.*

Petitioner was a FAP recipient from July 1, 2015, through September 30, 2015.

The Department's representative testified that Respondent's FAP benefit card was found in the possession of another person that had been arrested by the Lenawee Police Department. Shortly after this person was arrested, Respondent reported his FAP benefit card as being lost. The Department's representative testified that the person found holding Respondent's FAP benefit card initially claimed to having found the FAP card but later admitted to purchasing two months of Respondent's monthly allotment of FAP benefits.

The Department presented a photograph of the person in possession of Respondent's FAP benefits card taken at a business where Respondent's FAP benefits were used to make a \$ [REDACTED] purchase.

The unauthorized transfer of FAP benefits fits the Department's definition of FAP trafficking in the amount of the benefits trafficked.

However, the only evidence that Respondent transferred his FAP benefits to another person is the hearsay statement of a known criminal. This person had provided multiple explanations to the Department concerning how he came to possess Respondent's FAP benefit card. First the Department was told that he found the FAP card but later that the card had been purchased. The person found with the card did not testify during Respondent's hearing and no signed statements were offered as evidence.

Although the Department has presented a reasonable explanation of how Respondent's FAP benefits came to be in the possession of another person and that Respondent's FAP benefits were used at a business where that person was shopping, this Administrative Law Judge finds that the Department has failed to present clear and convincing evidence that Respondent transferred his FAP benefits for July and August of 2015, to another person.

Furthermore, the Department presented a picture of an unknown person leaving a business on the same date and approximately the same time that Respondent's FAP benefits were used to make a purchase in Ohio.

Furthermore, this Administrative Law Judge finds that a photograph of a person who is not the Respondent leaving a business where Respondent's FAP benefits were used to make a purchase and not far from Respondent's residence of record cannot be considered by itself to be clear and convincing evidence that Respondent fraudulently transferred his FAP benefits to another person. It is merely circumstantial evidence that a person other than Respondent was observed leaving that business and not proof of who used those FAP benefits to purchase the items in the photograph.

Although the Department's investigation report presents a logical explanation of how Respondent may have fraudulently transferred his FAP benefits to another person in violation of the Food and Nutrition Act of 2008, this investigation report on its own is not evidence of fraud. Since the hearing record does not contain clear and convincing evidence of Food Assistance Program (FAP) trafficking, the Department has failed to establish an Intentional Program Violation (IPV).

### **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 not established by clear and convincing evidence that Respondent committed an IPV.

2. The Department is ORDERED to delete the OI and cease any recoupment action.

KS/nr

  
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Kevin Scully  
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]