



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 2, 2017  
MAHS Docket No.: 17-005795  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [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 26, 2017, from Lansing, Michigan. [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. [REDACTED] Respondent, appeared and provided testimony.

**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 10, 2017, 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. In April 2015, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) conducted an investigation of the [REDACTED], located at [REDACTED]. [Exh. 1, pp. 84-86].
4. The [REDACTED] ("the store") is a small convenience store with a limited supply of food items, one cash register, no optical scanner, no shopping carts or baskets and limited counter space. [Exh. 1, pp. 69-82].
5. The USDA-FNS investigation revealed that records from the store showed Electronic Benefit Transfer (EBT) transactions that demonstrated a pattern of unusual, irregular, and inexplicable activity for the size, inventory, and layout of the store. [Exh. 1, pp. 87-97].
6. Following the investigation, the USDA-FNS determined that the store was engaged in trafficking of FAP benefits from 2013 through 2015. [Exh. 1, pp. 69-100].
7. In June 2015, the USDA-FNS permanently disqualified the store from participation in the Supplemental Nutrition Assistance Program ("SNAP" also known as "FAP"). [Exh. 1, pp. 98-100].
8. Respondent was a recipient of FAP benefits issued by the Department. [Exh. 1, pp. 33-36].
9. The OIG contends that Respondent's EBT card was used at the store and that, based on the nature of the transactions, was used fraudulently and in a manner indicative of FAP trafficking.
10. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food.
11. 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 FAP benefits.
12. The Department's OIG indicates that the time period they are considering the fraud period is January 1, 2013, through June 30, 2015 (fraud period).
13. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
14. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED].

15. This was Respondent's first alleged FAP IPV.

16. 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.

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, 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 she engaged in multiple high dollar purchases at a store that was found to be engaged in FAP trafficking during the alleged fraud period. Respondent admitted that she and her teenage children used the EBT card at the store in question because it was

close to her house. Respondent further stated that purchases made with the EBT card are not taxed, which would explain why some of her purchases at the store may result in an even dollar amount. Respondent denied that she committed an IPV or that she was involved in trafficking.

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.

Based upon the above Findings of Fact, the store was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. This is supported by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) investigation report which indicated that the store was a small grocery/convenience store with limited eligible food stock items that was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. [Exh. 1, pp. 1, pp. 69-82]. The USDA-FNS also found that the store lacked sufficient eligible food items in its inventory to support high dollar transactions using Electronic Benefit Transfer (EBT) cards. [Exh. 1, pp. 1, pp. 98-100]. This evidence also showed that the store engaged in high dollar transactions which were above the \$24.00 average for similar stores in the same general geographical area. [Exh. 1, pp. 1, pp. 98-100].

The Administrative Law Judge also finds that the Department has shown that Respondent's EBT card was used at the store during the fraud period. [Exh. 1, pp. 63-68]. The record shows that Respondent engaged in 68 transactions at the store that ended in an even (.00) dollar amount. [Exh. 1, pp. 63-68]. There were also some transactions that were higher than \$ [REDACTED] which the Department contends is the average transaction amount for comparable stores. [Exh. 1, pp. 63-68]. The question is whether this activity on this record constitutes clear and convincing evidence of FAP trafficking?

Respondent explained that the items that were purchased on her EBT card were not taxed, but she did not provide any support for this contention. This Administrative Law Judge had reviewed the multiple even dollar transactions purchased at the store on Respondent's EBT card and notes that they all consist of a low dollar amount. The Department has not shown by clear and convincing evidence that these low amount,

even dollar transactions are not legitimate purchases of food items at the store. Had the record contained a series of higher dollar transactions (i.e., \$100.00, \$200.00, etc.) that ended in an even dollar amount, this would be more likely to be indicative of trafficking. However, the nature of the purchases made at the store with Respondent's EBT card in this record does not rise to the level of clear and convincing evidence to show that the purchases were trafficking or were otherwise unlawful.

Accordingly, this Administrative Law Judge finds that the Department's OIG Agent failed to establish with clear and convincing evidence that Respondent was guilty of FAP trafficking. Simply because Respondent's EBT history of transactions during the period in question may be suspicious, it does not necessarily follow that Respondent's EBT transaction history constitutes clear and convincing evidence that she was engaged in FAP trafficking. The clear and convincing evidence in this record does not show that Respondent either bought or sold FAP benefits for cash or consideration other than eligible food. The evidence is also not clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. Similarly, the evidence is not clear and convincing that Respondent redeemed or presented for payment coupons known to be fraudulently obtained or transferred. Here, the Department has not provided clear and convincing proof that produces in the mind of the Administrative Law Judge, a firm belief or conviction as to the truth of the precise facts in issue. Consequently, the OIG has failed to establish that Respondent committed an intentional program violation with respect to the FAP program.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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 not shown that Respondent was guilty of her first IPV concerning FAP benefits. The Department has also not shown that Respondent or any of Respondent's group members received an OI of FAP benefits that the Department is entitled to recoup.

This Administrative Law Judge therefore concludes that the Department has not shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a total \$ [REDACTED] overissuance. Consequently, the Department's request for FAP program disqualification and full restitution must be not granted.

**DECISION AND ORDER**

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

1. Respondent did not commit an IPV due to FAP trafficking.
2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED]

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

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits.

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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]