



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 22, 2018
MAHS Docket No.: 17-010446
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 January 23, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

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 July 22, 2016, 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. Respondent did not have an apparent

physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-15.

2. Respondent reported two other people living in his household that did not purchase and prepare food with him. Exhibit A, p 11.
3. Respondent was a Food Assistance Program (FAP) recipient from December 23, 2016, through January 28, 2017. Exhibit A, 20-21.
4. Respondent was incarcerated in the [REDACTED] on [REDACTED], and he was not released from the jail until [REDACTED]. Exhibit A, pp 16-18.
5. Respondent's Food Assistance Program (FAP) benefits were used to make six separate purchases between December 23, 2016, and January 28, 2017, for purchases totaling \$ [REDACTED]. Exhibit A, p 19.
6. The Department's OIG filed a hearing request on July 10, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 5-8.
7. On April 28, 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 5.
8. This was Respondent's first established IPV.
9. 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.

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Evidence that the client had prior knowledge of these requirements is unnecessary to establish an Intentional Program Violation (IPV) for trafficking. IPV is automatically suspected for a client who is alleged to have trafficked FAP benefits. 7 CFR 273.16, BAM 720.

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

Respondent acknowledged his duties and responsibilities including the duty to use FAP benefits in a manner consistent with the Food and Nutrition Act of 2008 on a Redetermination (DHS-1010) form received by the Department on July 22, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent was a FAP recipient from December 23, 2016, through January 28, 2017, as a group of one. Respondent was receiving a monthly allotment of FAP benefits during this period in the amount of \$ [REDACTED] which was the maximum allotment for a group

of one with a \$ [REDACTED] monthly net income. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2016), p 1.

Respondent was incarcerated on [REDACTED], in the [REDACTED]. He was not released from the jail until [REDACTED]. During this period of incarceration, Respondent's FAP benefits were used to make six separate purchases totaling \$ [REDACTED] from December 23, 2016, through January 28, 2017.

Records of Respondent's incarceration and the records of the purchases made using Respondent's FAP benefits of a type of record commonly relied upon by reasonably prudent persons in the conduct of their affairs. Respondent has not presented any evidence on the record to dispute the validity of these records. This Administrative Law Judge finds that these records establish that the six purchases totaling \$ [REDACTED] were not made by Respondent. Further, Respondent was not authorized to transfer his FAP benefits to another person.

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.*

Trafficking includes the buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes attempting to buy, sell, steal, or otherwise affect an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. BAM 700, p 2.

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996), p 381.

In this case, the Department presented clear and convincing evidence not rebutted by Respondent that his FAP benefits were used by a person not in his benefit group to purchase items. No evidence was presented on the record to support a claim that Respondent's FAP benefits were lost or stolen. Respondent did not report his benefit card stolen or lost. No explanation was entered on the record of how a stolen or lost card could have been used without the PIN number. Therefore, there is circumstantial evidence to support a finding that Respondent intentionally transferred his FAP benefits to another person.

The circumstances also support a finding that upon his incarceration in jail, that Respondent intentionally transferred his FAP benefits for the purpose of receiving cash or consideration other than eligible food. The prohibited transfer of a valuable resource is inconsistent with an honest purpose and is circumstantial evidence that Respondent intended to get something in return. Further, in the absence of direct evidence of consideration received by Respondent in exchange for his FAP benefits, FAP trafficking may still be proven because FAP trafficking includes an attempted transfer where the exchange of consideration remains incomplete.

Respondent presented evidence supporting his diagnosis by a treating physician with post-traumatic stress disorder and alcohol abuse in early full remission after beginning treatment services on [REDACTED].

The evidence presented on the record does not support a finding that Respondent suffered from mental impairments during the period of the alleged overissuance. Assuming that Respondent was suffering from post-traumatic stress disorder and alcohol abuse before being incarcerated and the transfer of his FAP benefits, this evidence is insufficient to establish that Respondent was incapable of forming the intent to commit fraud. A diagnosis of post-traumatic stress disorder and alcohol abuse by itself is insufficient to establish a physical or mental impairment that would limit the understanding or ability to fulfill the duties and responsibilities of being enrolled in FAP.

This Administrative Law Judge finds that the Department established by clear and convincing evidence that the Respondent intentionally used Food Assistance Program (FAP) benefits in a manner other than authorized by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a, and that fits the Department's definition of benefit trafficking in Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 1-22.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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.

The record evidence indicates that this is Respondent's first established IPV violation.

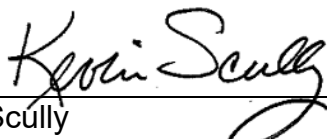
The Department has established an Intentional Program Violation (IPV).

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/hb



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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]