



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 9, 2018  
MAHS Docket No.: 17-013825  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on March 28, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of the Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for the FAP?

**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 September 6, 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. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility not to use her Bridge Card for anything other than the purchase of food and not to sell or trade her card.
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 fraud period is January 2014 through February 2016 (fraud period).
7. During the 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service as undeliverable.

### CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
  - the total amount is less than \$500.00, 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.

BAM 720 (January 2016), pp. 5, 12-13; ASM 165 (August 2016).

### **Intentional Program Violation**

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 700 (October 2016), pp. 7-8; BAM 720, p.1.

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

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 M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked \$ [REDACTED] of her FAP benefits at H&M Incorporated (Store), a Valero gas station. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (January 2015), p. 3. The federal regulations define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2. In this case, the Department established that it adequately notified Respondent at the time of application and when she received the Bridge Card that she could not traffick her FAP benefits (Exhibit A, pp. 111-129).

The Department presented evidence that after an investigation by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), Store was charged with trafficking and that Store was permanently disqualified from the federal Supplemental Nutrition Assistance Program (SNAP), also known as FAP in Michigan. The Department presented evidence from the USDA investigation showing that Store is approximately 1000 square feet in size, has no baskets/shopping carts, no optical scanner for ease of transactions, no hot food, no bundled meat or vegetables, and has a turnstile at the cash register preventing quick and large transactions from being completed. The Department also presented photographs of the Store layout and long shelf life merchandise with accumulating dust indicating slow turnover and restocking. Finally, the Department presented benchmarks for other facilities in the area which are of a similar size showing that Store’s average transaction amount as well as maximum dollar value of transactions are consistently well above the average of the other facilities. To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at Store.

The Department contended that Respondent’s FAP purchases were trafficked because Store did not have the inventory or infrastructure to support some of the purchases made by Respondent. In addition, the dollar value and timing of transactions are indicative of trafficking. After the investigation discussed above, any transaction with a value of more than \$ [REDACTED] was deemed as a trafficking transaction as were back-to-back transactions. Respondent had 17 transactions over \$ [REDACTED] from January 8, 2014, through February 8, 2016.

The Department asserted that because Respondent’s transaction history has back-to-back and large dollar value purchases, the infrastructure and inventory of the store, as well as Store’s permanent disqualification from the use of SNAP benefits, it considered Respondent to have trafficked benefits at Store.

Respondent denies trafficking FAP benefits. Respondent testified that the transactions were legitimate and were caused by several factors. First, the owner of Store would allow her to take food items even when she had no money and he would keep a ledger allowing her to pay him back when money or FAP benefits became available to her. Second, she occasionally gave members of her family her FAP card while they were watching her children so that they could feed her children. In those circumstances, Respondent does not feel she is responsible for transactions made by those individuals. She did not specifically identify any transactions from her EBT history which fall into this category. Finally, Respondent went to Store because it was only five houses down the street from where she was living, and she did not have adequate transportation to go to more suitable grocery shopping establishments. For a period of time, Respondent was without gas or electricity in her home. Since Respondent needed to feed her kids, she was willing to pay whatever she needed to pay and buy older products to ensure that they were fed. She would purchase Lunchables, frozen pizzas, which Store owner would heat up for her, and cereal.

After reviewing Respondent's FAP transaction history, while the circumstances explained by Respondent may have been true on some days, overall the transactions are consistent with trafficking and inconsistent with Respondent's explanations. On January 8, 2014, Respondent completed a \$ [REDACTED] transaction at Store, but later the same day, completed a \$ [REDACTED] transaction at [REDACTED]. On February 8, 2014, Respondent completed a \$ [REDACTED] transaction at Store, but one day prior had completed a \$ [REDACTED] transaction and a \$56.11 transaction at [REDACTED], a \$ [REDACTED] transaction at [REDACTED]. [REDACTED] then one day later completed a \$ [REDACTED] transaction at [REDACTED]. On July 7, 2014, Respondent completed a \$ [REDACTED] transaction at Store, then later the same day completed a \$ [REDACTED] transaction at [REDACTED]. On August 7, 2014, she completed a \$ [REDACTED] transaction at Store then the next day a \$ [REDACTED] transaction at Store, yet she also spent \$ [REDACTED] at [REDACTED] between August 7<sup>th</sup> and August 9<sup>th</sup>. On November 11<sup>th</sup> and 12<sup>th</sup> of 2014, Respondent spent \$ [REDACTED] in four transactions at Store. On December 7, 2014, Respondent spent \$ [REDACTED] in three transactions on one day at store. On December 12, 2015, Respondent spent \$ [REDACTED] at Store, but one day prior had spent \$ [REDACTED] at [REDACTED]. Finally, on April 8, 2015, Respondent spent \$ [REDACTED] and \$ [REDACTED] in two transactions at Store only five minutes apart, yet one day prior, she also spent \$ [REDACTED] at [REDACTED], \$ [REDACTED] at [REDACTED], and \$ [REDACTED] at [REDACTED]. These are only some of the transactions by Respondent over the course of the fraud period.

The foregoing evidence, coupled with the USDA's finding that Store trafficked FAP benefits, was sufficient when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at Store.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two

years for the second IPV, and lifetime for the third IPV. BAM 720, p. 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

### Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8.

In this case, the Department alleged that Respondent trafficked \$ [REDACTED] in FAP benefits from January 2014 through February 2016. A review of the Respondent's IG-312 EBT History presented by the Department supports FAP trafficking in the amount alleged. (Exhibit A, pp. 62-68). The Department is entitled to recoup \$ [REDACTED] from Respondent, the amount of trafficked FAP benefits.

### 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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 **months**.



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**Amanda M. T. Marler**  
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]  
[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
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