



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 4, 2018  
MAHS Docket No.: 17-015160  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

**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 April 12, 2018, from Detroit, 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 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 FAP benefits for 12 months?

**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 October 19, 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 FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility not to engage in the trafficking of FAP benefits.
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 date is February 20, 2017 (fraud date).
7. The Department alleges that Respondent engaged in the trafficking of FAP benefits in the amount of [REDACTED] and requested an OI in that amount.
8. This was Respondent's first alleged IPV.
9. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720 (October 2015), p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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.

Additionally, trafficking is defined as (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits and (iv) attempting to buy, sell, or steal FAP benefits for cash refund deposits. BAM 700 (January 2016), p. 2. [Emphasis added].

In the present case, the Department alleges that Respondent committed an IPV of FAP benefits based on her alleged social media post (Facebook) offering to acquire FAP benefits on February 20, 2017. The Department testified that Respondent submitted two applications on April 22, 2015 and December 13, 2016, in which she acknowledged that she understood the rules associated with all programs including the receipt of FAP benefits. According to the Department the information contained in the application included the prohibition of trafficking benefits and the consequences if an individual engages in the trafficking of benefits.

The Department presented evidence to show that on February 20, 2017, Respondent posted the following to her social media page: "So all these felons getting [REDACTED] in stamps. I just need a good [REDACTED], inbox me." There were several responses to Respondent's post. The Department is unable to access Respondent's Facebook inbox account and thus it is unknown if additional responses appeared in her inbox. 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. Respondent's statement that she needed [REDACTED] in food stamps and her request to have individuals inbox her is found to be sufficient to establish she attempted to affect an exchange of FAP benefits and thus engaged in the trafficking of FAP benefits.

On February 22, 2017, Respondent posted the following to her social media page: "House hold bundle deal needed and stamps need asap. Yall don't like money?" The Department argued that Respondent was attempting to exchange hair for food stamps. However, this post only shows that Respondent indicated that she was in need of stamps. Respondent did not say that she would sell the hair in exchange for food stamps. Additionally, each of the responses following the post related to finding deals on hair bundles. As such, it is found that the Department has failed to establish trafficking with this post.

The Department presented photos of Respondent in order to show that the social media post was in fact of Respondent's (comparing social media photo to the photograph listed with the Michigan Secretary of State). Respondent failed to appear at the hearing and thus failed to provide an alternate explanation for the post other than the attempted purchase of FAP benefits. Accordingly, it is found that the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits based on her "attempt" to trafficking FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (January 2016), p. 15. 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. 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12-month disqualification under the FAP program.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1.

For FAP trafficking, the OI amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) as determined by:

- The court decision.
- The individual's admission.
- 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. BAM 720, p. 8

In this case, the Department sought an OI of program benefits in the amount of [REDACTED] due to Respondent's attempt to buy [REDACTED] worth of FAP benefits pursuant to the February 20, 2017 social media post. As previously stated, the Department has established that the Respondent trafficked FAP benefits. As such, the Department has established an overissuance in the amount of [REDACTED].

### **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:

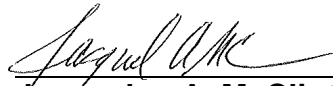
1. The Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

2. Respondent did receive an OI of program FAP benefits in the amount of [REDACTED].

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

It is FURTHER ORDERED that Respondent is subject to a 12-month disqualification from FAP benefits.

JAM/tlf



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**Jacquelyn A. McClinton**  
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

**Via Email:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent – Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]