



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED] - [REDACTED]

Date Mailed: May 30, 2018
MAHS Docket No.: 17-016463
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

AMENDED 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 May 23, 2018, from Detroit, Michigan. The Department was represented by Rick Rafferty, 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).

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge Amanda M. T. Marler and mailed on May 24, 2018. That decision is hereby **AMENDED** to add additional law/regulation relevant to the decision at the top of page four and additional analysis at the bottom of page four. The outcome of the decision was not affected by these changes.

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 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 November 15, 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 let others use her Electronic Benefit Transfer (EBT) card and not to buy, sell, exchange, trade, or otherwise traffic FAP benefits.
5. Respondent has a physical disability, but her application for benefits indicates she is not blind; therefore, she had no disability which would impair her ability to understand and fulfill her responsibilities as a FAP recipient.
6. The Department's OIG indicates that the time period it is considering the fraud period is November 2016 through August 2017 (fraud period).
7. During the fraud period, Respondent was issued FAP benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] as a result of unauthorized use and trafficking.
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 (October 2017), 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 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). An IPV also is defined as committing any act which is a violation of Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c)(2). 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 the Respondent committed an IPV of her FAP benefits by trafficking or allowing unauthorized use of her FAP benefits while she was incarcerated. Trafficking is (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; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p. 2.

The Respondent was confirmed to have been incarcerated from [REDACTED] 2016, through [REDACTED] 2017, in the Kalkaska County Jail. While incarcerated, she was issued FAP benefits each month from November 2016 through August 2017. The benefits were used while she was incarcerated from [REDACTED] 2016, through [REDACTED] 2017, in the amount of \$ [REDACTED]

The Department's evidence shows that clearly someone used the Respondent's FAP benefits while she was incarcerated. However, based on Department policy, a finding of FAP benefit trafficking requires more than allowing someone outside of the FAP benefit group to use FAP benefits. Department policy requires "cash or consideration" in exchange for use of the FAP benefits. BAM 700, p. 2. Department policy does not define "consideration", but it is generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires the Department to establish that Respondent received something of value for use of her FAP benefits; no evidence of cash or consideration was presented by the Department.

It should also be noted that while she was incarcerated, Respondent was not the only authorized user and member of her FAP group. Since Respondent was incarcerated, she could not use the benefits. But the EPPIC report shows that Respondent had an authorized user on her account; yet the report does not show when the user became active or inactive. Since the Department did not establish when the authorized user was on the account in relation to the fraud period, the Department has not shown that these transactions were not legitimate.

Under these circumstances, the Department has **not** established by clear and convincing evidence that Respondent committed an IPV of the FAP.

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 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. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As mentioned above, the Department has not met its burden of proof to establish by clear and convincing evidence that the Respondent committed an IPV. Therefore, the Respondent is **not** subject to a disqualification under the FAP program.

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 amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6. 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 an OI equal to the value of the alleged trafficked benefits, or \$ [REDACTED]. As discussed above, the Department did not show cash or consideration in the alleged trafficking; therefore, it did not establish that Respondent had trafficked benefits and cannot collect the alleged OI. In addition, if there was an authorized user on the account, the use of benefits was not necessarily fraudulent.

Since the Department did not properly calculate the alleged OI of FAP benefits, it may not recoup or collect the alleged OI.

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 **did not** meet its burden of proof in establishing the value of the OI.

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

It is FURTHER ORDERED that Respondent is **not** subject to a period of disqualification from the FAP.



AM/

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) 763-0155; 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

MDHHS-OIG-Hearings

DHHS

Vicki Dahl - 4
MDHHS-Alpena-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED] [REDACTED]

M Shumaker
Policy Recoupment
A Marler
MAHS