



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR



Date Mailed: May 3, 2018  
MAHS Docket No.: 17-013823  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

**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 5, 2016, from Lansing, Michigan.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Department submitted Exhibit pages 1-121 which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

**ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits for 12 months?
3. Did the Department establish an over issuance (OI) of FAP benefits?

### FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED] to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent has completed applications acknowledging rights and responsibilities.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. [REDACTED]. [dba [REDACTED]] located at [REDACTED] was permanently disqualified from the SNAP Benefits Program for the trafficking of Michigan Food Stamp benefits.
5. The Food and Nutrition Service (FNS) conducted an administrative audit/review of [REDACTED] on [REDACTED]. Review was conducted based on an analysis of the completed food stamp transactions at [REDACTED].
6. The completed food stamp transactions revealed an established pattern of clear and repetitive patterns of unusual, irregular, and inexplicable activity based on the size of the establishment.
7. Analysis of completed food stamp transactions found [REDACTED]. was completing transactions ending in the same cents value, transactions completed too rapidly, and excessively large transactions completed.
8. Based on the analysis of the transaction history at [REDACTED]. the FNS charged [REDACTED]. and its owner with trafficking of food stamp benefits.
9. On [REDACTED] a formal charge letter was issued to [REDACTED]. and its owner; after which time it was determined that they were not eligible for the trafficking civil money penalty (CMP) and ultimately permanently disqualified from the SNAP Benefit Program on [REDACTED].
10. The administrative audit was conducted by FNS Investigators on [REDACTED] during daytime hours. During which time, Investigators noted [REDACTED]. did not utilize an optical scanner, possessed no shopping baskets, shopping carts, and had one cash register with one point of sales device (POS). Additionally, FNS Investigators found ineligible items such as tobacco products, cigarettes, cleaning products, paper products, bleach, and laundry detergent were sold at the store.

11. Respondent had a number of large and back to back transactions that fit the pattern for the trafficking that was taking place at these locations.
12. Respondent was identified by his photograph by a store employee as someone who he had trafficked FAP benefits with in exchange for cash and liquor.
13. Respondent is responsible for \$ [REDACTED] from [REDACTED], [REDACTED], of FAP benefits that were trafficked at [REDACTED] and [REDACTED].
14. Respondent did not appear and give evidence at the scheduled hearing to rebut the evidence presented by Petitioner in the Hearing Summary and admitted exhibits.
15. This was Respondent's first alleged 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 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 January 1, 2016, 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 or more, or

- the total 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. BAM 720, pp 12-13 (1/1/2016) (Emphasis added).

### **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, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016)).

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 of 1977, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id.* DHHS policy BAM 700-Overissuance: The amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked).

FNS ruled on October 4, 2011, that "an individual who offers to sell their benefits by either making their offer in a public way or posting their EBT card for sale online has committed an IPV." Section 7(b) of the food stamp act and 7 CFR 274.7(a) clearly states posting your EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in and IPV. BAM 720. Intentional Program Violations states that "IPV is suspected for a client who is alleged to have trafficked FAP benefits". MCL 750.300a, BEM 203, 7 U.S.C. 2016 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 of 1977, 7. U.S.C. 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. DHHS Policy BAM 700 defines Overissuance "For FAP benefits, an

overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked".

The evidence on the record indicates that Subjects of investigations admitted to trafficking food stamp benefits with the owner and its employees at [REDACTED]. The subjects would disclose to other individuals that [REDACTED] was buying food stamp cards for .50 cents on the dollar. Investigated Subjects identified trafficking transactions on their personal IG'312 Reports then stated the even dollar transactions that appear on their transaction reports were the result of the Subject receiving cash money or other ineligible items [such as gasoline and tobacco items] for their food stamp card. Additionally, these subjects stated the transactions completed within minutes/hours apart within the same day were the result of the owner attempting to hide the trafficking of food stamp cards. The [REDACTED] owner would request Subjects to return later in the day if they wished to receive more money for their stamp card. The owner was attempting to keep the transactions low (dollars) so he would not get caught trafficking food stamp benefits. Furthermore, Subjects of investigations identified transactions with a dollar amount of \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] dollars as trafficking transactions. These transactions reflect the purchasing of cigarettes. The owner would double the price of a pack of cigarettes and allow a person to use his / her EBT card to pay. They also admitted that at times they were able to purchase ineligible items, such as cleaning items and gasoline. Purchasing of ineligible items did not occur regularly because Subjects of investigations main reason for going to [REDACTED] was to obtain cash money for their food stamp card. Subjects of investigations completed Recoupment Agreements for the identified trafficking transactions completed at [REDACTED]. Several written statements were obtained identifying [REDACTED] as a food stamp trafficking location. Subjects were referred to administrative hearings when Agents from the OIG were unable to locate a Subject, or they did not contact OIG directly to arrange an interview at a time, place, or location of their choice.

In the above captioned matter, the record evidence clearly shows by a preponderance of the evidence that Respondent trafficked FAP benefits in exchange for cash and liquor. Respondent is responsible for \$ [REDACTED] from [REDACTED], of FAP benefits that were trafficked at [REDACTED] and [REDACTED].

### **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 2. 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

**Overissuance**

**When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).**

The trafficking amount is \$ [REDACTED]. Respondent is responsible for \$ [REDACTED] from [REDACTED], of FAP benefits that were trafficked at [REDACTED].

**DECISION AND ORDER**

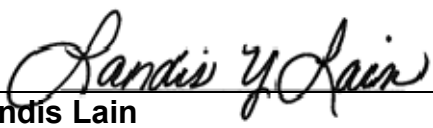
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did solicit for/receive an over-issuance of Food Assistance Program benefits in the amount of \$ [REDACTED].

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

It is ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 12 months beginning [REDACTED].

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
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]