



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: June 26, 2018  
MAHS Docket No.: 17-016762  
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 June 12, 2018, from Lansing, Michigan.

The Department was represented by Darren Bondy, Regulation Agent of the Office of Inspector General (OIG). Petitioner's Exhibits 1-107 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 December 7, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Larry's Bait & Sport (Larry's) is classified as a convenience store by the FNS with one point of sale device. It has a single cash register with no optical scanners to assist in processing transactions and no customer shopping carts or baskets available. Along with basic snack and food items, Larry's also sells tobacco products, alcoholic beverages, cleaning supplies, paper products, and lottery tickets. The FNS investigation determined that transactions in excess of \$30.00 are excessive for a store of this size and inventory and identified numerous individual recipients with evidence of unauthorized transactions in their EBT purchase history at Larry's Bait & Sport, which were used by FNS to disqualify the store from participation in the food assistance program.
3. In October of 2016, Agent Vitous was assigned to investigate unauthorized FAP recipient transactions at the Larry's Bait & Sport, 5449 Round Lake Rd, Gladwin, MI. Larry's was the target of a United States Department of Agriculture Food and Nutrition Service (USDA FNS) investigation which determined that FAP trafficking was occurring at the store.
4. The Food and Nutrition Service (FNS) is the federal agency which licenses retailers for participation in the Supplemental Nutrition Assistance Program (SNAP). Their investigation documented numerous transactions indicative of trafficking at Larry's, including 1) the majority or all of individual recipient benefits were exhausted in unusually short periods of time, 2) multiple transactions made from individual benefit accounts in unusually short time frames, and 3) excessively large recipient purchase transactions. FNS determined that these transactions represented clear and convincing evidence of FAP trafficking and as a result, Larry's Bait & Sport was permanently disqualified from participation in the SNAP on August 24, 2016.
5. A BRIDGES inquiry of Respondent's name shows Respondent has an active assistance case and did during the alleged fraud period.
6. A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions at the Larry's Bait & Sport as documented by the USDA Food and Nutrition Service, including an unusual number of transactions ending in the same cents value, multiple transactions made from individual benefit accounts in unusually short time frames or excessively large recipient purchase transactions for a store of this size and inventory.
7. Respondent reported no physical and/or mental impairments that would limit their understanding or ability to fulfill the requirements for the proper use of food assistance program benefits.

8. The eligibility summary shows the subject received \$1,087.00 in Food Assistance during the alleged fraud period.
9. The fraud period was April 1, 2014, through September 30, 2015.
10. Respondent received FAP in the amount of \$1,087.00. Respondent was entitled to receive \$0.00 in FAP benefits.
11. 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.
12. This was Respondent's first alleged IPV.
13. 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".

A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions at the Larry's Bait & Sport as documented by the USDA Food and Nutrition Service, including an unusual number of transactions ending in the same cents value, multiple transactions made from individual benefit accounts in unusually short time frames or excessively large recipient purchase transactions for a store of this size and inventory.

### **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 \$1,087.00. Respondent is responsible for \$1,087.00 (from April 1, 2014, to September 30, 2015) of FAP benefits that were trafficked at Larry's Bait and Sport.

**DECISION AND ORDER**

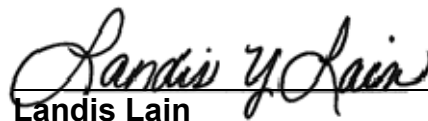
This Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did solicit for/receive an OI of FAP benefits in the amount of \$1,087.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,087.00 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months beginning June 12, 2018.

LL/bb



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**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) 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

**DHHS**

Michelle Morley  
715 S Loxley Rd  
Houghton Lake, MI 48629

Roscommon County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

[REDACTED]  
MI [REDACTED]