



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: July 30, 2018  
MAHS Docket No.: 18-003258  
Agency No.: 120509409  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** John Markey

### **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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on July 25, 2018, from Lansing, Michigan. The Department was represented by Philip Giuliani, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 88 pages of documents were offered and admitted into evidence as Department's Exhibit A, page 1-88.

### **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 FAP benefits?

### **FINDINGS OF FACT**

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

1. Respondent filed with the Department an application for FAP benefits on March 9, 2015. (Exhibit A, pages 56-66).

2. As part of the application process, Respondent certified that he had received, reviewed and agreed with the information in the assistance application Information Booklet, including the Important Things to Know publication (DHS-PUB-1010). (Exhibit A, page 66).
3. DHS-PUB-1010 advised Respondent that trading or selling FAP benefits was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. (Exhibit A, page 69).
4. Respondent did not have any mental or physical impairment that would limit his understanding or ability to fulfill his responsibilities regarding his FAP benefits.
5. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of H & M, Inc. (Exhibit A, pages 12-46).
6. FNS examined EBT transaction records for H & M, Inc. and found that the business had transactions indicative of trafficking and identified numerous excessively large purchases given the nature of the store. (Exhibit A, page 26).
7. On April 19, 2016, FNS issued a letter to H & M, Inc. informing H & M, Inc. that it was permanently disqualified from FAP as a result of FNS' finding that H & M, Inc. engaged in FAP trafficking. (Exhibit A, pages 44-45).
8. As a result of FNS' finding that H & M, Inc. engaged in FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at H & M, Inc.
9. From March 1, 2014, through November 30, 2015, Respondent made 16 purchases at H & M, Inc., 13 of which were flagged by the Department as fraudulent due to meeting the FNS investigation definition of an excessively large purchase. (Exhibit A, page 47).
10. On March 21, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in 13 fraudulent transactions at H & M, Inc. from March 1, 2014 through November 30, 2015, totaling \$723.00.
11. The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2014, through November 30, 2015 (fraud period).
12. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$723.00.
13. This was Respondent's first alleged IPV, and the OIG requested the Respondent be disqualified from receiving FAP benefits for one year.

14. Respondent did not appear at the hearing to rebut any of the Department's allegations.
15. The Notice of Hearing sent to Respondent's most recent address on file was returned 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.

#### **Intentional Program Violation**

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 1, 2014), page 1.

Trafficking is:

- The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700 (May 1, 2014), page 2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, the Department has met its burden. After an investigation, FNS determined that H & M, Inc. engaged in wide ranging fraud with respect to accepting and redeeming FAP benefits. The Department established that Respondent made numerous EBT transactions at H & M, Inc. during the FNS investigation period. 13 of those transactions were of a sufficiently large amount that it fit the indicia of trafficking used in the FNS investigation. Thus, the evidence shows that Respondent engaged in a pattern of suspicious FAP purchases from a store that was proven to be engaged in fraudulent FAP trafficking during the same time. Respondent did not appear at the hearing to provide any explanation for his EBT transactions at H & M, Inc. Accordingly, the Department's un rebutted testimony and exhibits established by clear and convincing evidence that Respondent engaged in unlawful FAP trafficking.

### **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, pages 15-16. In general, Clients are disqualified 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, pages 15-16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, page 1. The OI amount for trafficking-related IPV's is the value of the trafficked benefits as determined by: (1) a court decision; (2) the individual's admission; or (3) 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, page 8. This can be established through circumstantial evidence. BAM 720, page 8. In this case, the evidence shows that Respondent completed 13 transactions that qualified as trafficking. The total value of those 13 purchases was \$723.00. Thus, Respondent was overissued \$723.00.

## **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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$723.00 which the Department is entitled to recoup and/or collect.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$723.00, less any amounts already collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of one year.



JM/dh

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**John Markey**  
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

