



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: August 20, 2018
MAHS Docket No.: 18-003255
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on July 31, 2018, from Lansing, Michigan. The Department was represented by Craig Baylis, Regulation Agent of the Office of Inspector General (OIG). Respondent was represented by his attorney, Steven Gittleman, and Respondent testified on his own behalf. [REDACTED] acted as an interpreter for Respondent.

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 Food Assistance Program (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. On an application for assistance dated [REDACTED], 2012, Respondent acknowledged his duties and responsibilities including the duty to use Food Assistance Program (FAP) benefits in a manner consistent with the Food and Nutrition Act of 2008. Respondent did not have an apparent physical or mental

impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, p 57.

2. Respondent used Food Assistance Program (FAP) benefits at a business known to engage in benefit trafficking. Exhibit A, pp 22-23.
3. Respondent made purchases at this business, which fits the description of a convenience store, that were inconsistent with the known inventory and point of sale equipment of that business. Exhibit A, pp 24-33.
4. From January of 2012, through May of 2013, the average purchase involving Food Assistance Program (FAP) benefits at this business was \$40.13, and from May of 2013, through September of 2014, the average purchase was \$42.59. Exhibit A, pp 37-38.
5. From January 1, 2013, through September 30, 2014, only 7.14% of all purchases at this business exceeded \$150. Exhibit A, p 36.
6. This business regularly allowed its customers to use their Food Assistance Program (FAP) benefits to pay for prior purchases. Exhibit A, p 45.
7. Respondent made 19 purchases totaling \$5,212.41 that are consistent with known patterns of Food Assistance Program (FAP) trafficking. Exhibit A, pp 48-49.
8. The Department's OIG filed a hearing request on March 26, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
9. On March 26, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$5,212.41 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-10.
10. This was Respondent's first established IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

Federal regulations provide the following definition of intentional program violations:

Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of 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).

Respondent acknowledged his duties and responsibilities, including the duty to use FAP benefits in a manner consistent with the Food and Nutrition Act of 2008, on an application for assistance dated [REDACTED], 2012. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent used his FAP benefits at a business known to engage in the trafficking of benefits. This business fits the description of a convenience store with limited food inventory. This business allowed its customers to use their FAP benefits to pay for prior purchases, which is prohibited by federal regulations. 7 CFR 274.7(a). The average purchase involving FAP benefits at this convenience store ranged from \$40.13 to \$42.59. Only 7.14% of these purchases involving FAP benefits exceeded \$150. From April of 2012, through September of 2014, Respondent made 19 separate purchases with this FAP benefits that were greater than \$150. High-volume purchases, such as the ones made by Respondent, were inconsistent with the known inventory and point of sale equipment at that business. High value transactions at this business fit a known pattern of FAP trafficking, which creates an overissuance in the amount of the benefits trafficked. The amount of FAP benefits that fit known patterns of benefit trafficking was in the amount of \$5,212.41.

Respondent's representative argued that the records only indicate a transfer of FAP benefits to the store and do not establish what Respondent received, if anything, in exchange for those FAP benefits.

No evidence of what Respondent received in exchange for his FAP benefits was presented on the record. The ledger of purchases made on credit does not clearly indicate that Respondent did not use a combination of cash and FAP benefits.

However, the circumstances surrounding these 19 high-volume purchases support a finding of FAP trafficking. This business, a known trafficker of FAP benefits, did not have the available inventory to make high-volume sales of items available for purchase with FAP benefits. This business did not possess the point of sale equipment, such as optical scanning cash registers commonly available at businesses making high-volume sales of food items, which would have been necessary to make such high-volume sales. The circumstances surrounding these high-volume purchases support a finding that they fit patterns of FAP trafficking known to the Department.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be

uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Trafficking includes the buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes attempting to buy, sell, steal, or otherwise affect an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. BAM 700, p 2.

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996), p 381.

This Administrative Law Judge finds that the Department established by clear and convincing evidence that Respondent intentionally used Food Assistance Program (FAP) benefits in a manner other than authorized by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a, and that fits the Department's definition of benefit trafficking in Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 1-22.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the recipient 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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.

The record evidence indicates that this is Respondent's first established IPV.


The Department has established an Intentional Program Violation (IPV).

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 receive an OI of Food Assistance Program (FAP) benefits in the amount of \$5,212.41.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$5,212.41 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/hb



Kevin Scully
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

Lauren Casper
27690 Van Dyke
Warren, MI 48093

Macomb County (District 20), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
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