



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: August 31, 2018  
MAHS Docket No.: 18-003625  
Agency No.: [REDACTED]  
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 August 29, 2018, from Lansing, Michigan. The Department was represented by Jennifer Allen, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4). During the hearing, 126 pages of documents were offered and admitted into evidence as Exhibit A, pages 1-126.

**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 was an ongoing FAP recipient.

2. On November 10, 2014, the Department mailed to Respondent a Redetermination to obtain ongoing eligibility information from Respondent. Exhibit A, pp. 100-105.
3. Respondent returned the completed Redetermination to the Department and certified that all information was correct and that she was aware of DHS Publication 1010. Exhibit A, pp. 100-105.
4. DHS Publication 1010 informed Petitioner that it is fraudulent to traffic FAP benefits, which includes the exchange of FAP benefits for consideration other than eligible food products. It further provides that if proven to have engaged in FAP benefits trafficking, the penalty is disqualification and a requirement to pay back the trafficked benefits. Exhibit A, pp. 69-70.
5. Respondent did not have any mental or physical impairment that would limit her understanding or ability to fulfill his her regarding her FAP benefits.
6. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named S & R Petro. Exhibit A, pp. 11-38.
7. FNS examined EBT transaction records for S & R Petro and found that the business had transactions indicative of trafficking and identified numerous excessively large purchases given the nature of the store. Exhibit A, pp. 11-38.
8. During the investigation, FNS visited S & R Petro and took pictures of the store. The pictures make clear that this store was engaged in widespread FAP fraud. Exhibit A, pp. 13-38.
9. On July 18, 2017, FNS issued a letter to S & R Petro. informing the store that it was permanently disqualified from FAP as a result of FNS' finding that the store engaged in FAP trafficking. Exhibit A, pp. 11-12.
10. As a result of FNS' finding that S & R Petro engaged in FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at the store.
11. From January 1, 2015, through June 30, 2017, Respondent made 46 purchases at S & R Petro, 30 of which were flagged by the Department as fraudulent due to meeting the FNS investigation definition of an excessively large purchase. Exhibit A, pp. 108-110.
12. On April 9, 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 30 fraudulent transactions at S & R Petro from January 1, 2015, through June 30, 2017, totaling \$2,796.00. Exhibit A, pp. 1-3.

13. The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2015, through June 30, 2017. Exhibit A, p. 4.
14. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,796.00. Exhibit A, pp. 1-9.
15. This was Respondent's first alleged IPV, and the OIG requested the Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, p. 1.
16. Respondent did not appear at the hearing to rebut any of the Department's allegations.
17. The Notice of Hearing sent to Respondent's most recent address on file was not 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.

The Department has alleged that 30 of Respondent's 46 purchases at S & R Petro during the alleged fraud period were instances of trafficking. The Department is seeking an order finding Respondent committed an IPV with respect to FAP and requiring Respondent to repay the amount trafficked.

### **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 S & R Petro engaged in wide ranging fraud with respect to accepting and redeeming FAP benefits. A review of the store's inventory makes it absolutely clear that this store was not a legitimate provider of foodstuffs. Rather, it shows that the store was in the business of trafficking FAP benefits for other consideration.

The Department established that Respondent made numerous EBT transactions at S & R Petro during the FNS investigation period. Only Respondent's transactions above \$54.00 were flagged as fraudulent. 30 of Respondent's 46 transactions over the course of the fraud period were so flagged. Based on the evidence presented, a purchase that large out of the store's limited and mostly expired inventory would be hard to accomplish. 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 her EBT transactions at S & R Petro. 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 30 transactions that qualified as trafficking. The total value of those 30 purchases was \$2,796.00. Thus, Respondent was overissued \$2,796.00.

### **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 \$2,796.00 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 \$2,796.00, 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

**DHHS**

LaClair Winbush  
8655 Greenfield  
Detroit, MI 48228

Wayne County (District 31), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

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