



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 7, 2018  
MAHS Docket No.: 18-004321  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

**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 September 5, 2018, from Lansing, Michigan. The Department was represented by Craig Baylis, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared with his attorney, [REDACTED] [REDACTED]

**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 purchased food and non-food items on credit from Deshi Bazar.
2. Deshi Bazar kept a ledger of all purchases it extended on credit to its customers, including Respondent.
3. Respondent periodically made payments to Deshi Bazar with his FAP benefits to pay down his credit balance.

4. On December 17, 2014, the FNS notified Deshi that FNS had determined the store engaged in FAP trafficking and that it was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result. Exhibit A, p. 22-23.
5. On April 5, 2017, Respondent signed a statement in which he admitted that he purchased food and non-food items on credit from Deshi Bazar, he paid his balance with his FAP benefits, and he knew it was wrong and illegal. Exhibit A, p. 43-44.
6. The Department conducted an investigation of Deshi Bazar and determined that all transactions of \$150.00 or more were indicative of trafficking.
7. The Department determined that Respondent made 33 transactions of \$150.00 or more at Deshi Bazar from January 2012 through October 2014. The total amount of Respondent's 33 transactions was \$10,728.43. Exhibit A, p. 54-58.
8. On April 23, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and to establish that Respondent owes the Department the value of the FAP benefits he trafficked.

### **CONCLUSIONS OF LAW**

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

### **Intentional Program Violation**

An intentional program violation (IPV) "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).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP 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;

- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP 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.

#### 7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(e)(6) and BAM 720, p. 1. 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, I find that the Department has met its burden. Respondent admitted that he used his FAP benefits to obtain consideration other than eligible food. Therefore, by Respondent's own admission, his conduct meets the definition of trafficking in 7 CFR 273.2(1).

#### **Disqualification**

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

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 12-month disqualification.

### **Overissuance**

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, the Department did not present sufficient evidence to establish the actual value of FAP benefits that Respondent trafficked. Respondent trafficked FAP benefits by using them to obtain consideration other than eligible food items. The Department used a data analysis to estimate the value of FAP benefits that Respondent trafficked. The Department did not present any evidence to establish the actual value of FAP benefits Respondent used to obtain consideration other than eligible food items.

The Department had access to ledgers containing the items that Respondent purchased, so the Department could have determined the actual value of FAP benefits Respondent used to obtain consideration other than eligible food items. The ledgers would have been the best evidence of the value of FAP benefits Respondent trafficked. Although the Department presented a ledger as an exhibit, the Department did not present any evidence to establish which transactions on the ledger were for consideration other than eligible food items.

For these reasons, the Department has not established that Respondent owes the Department a debt for the value of FAP benefits he trafficked.


### **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 should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall be disqualified from the FAP program for a period of 12 months.

JK/nr



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Jeffrey Kemm  
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**

Clarence Collins  
12140 Joseph Campau  
Hamtramck, MI 48212

Wayne 55 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
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**Counsel for Respondent**

[REDACTED]  
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**Respondent**

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