



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 18, 2018  
MAHS Docket No.: 18-005279  
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 or State), 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 September 12, 2018, from Lansing, Michigan. The Department was represented by Darren Bondy, Regulation Agent of the Office of Inspector General (OIG).

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).

State's Exhibit A pages 1-102 were admitted as evidence. Respondent's Exhibits pages 1-16 were submitted by Petitioner and admitted as evidence. The record 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 May 18, 2018, to establish an OI of benefits received by Respondent, as a result of Respondent having allegedly committed an IPV.
2. Larry's Bait & Sport 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.
3. Along with basic snack and food items, Larry's also sells tobacco products, alcoholic beverages, cleaning supplies, paper products, and lottery tickets.
4. 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.
5. 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.
6. Respondent is responsible for \$ [REDACTED] in unauthorized FAP transactions from August 1, 2014, through July 31, 2016, at the Larry's Bait & Sport.
7. Respondent has no previous Michigan or National FAP IPV sanctions.
8. The case number documented in the IPV area of the OIG report reflects the active case during the alleged fraud period.
9. An interview letter, and repayment agreement, was mailed to the Respondent on December 5, 2017.
10. Respondent reported mental impairments or disability.
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 an 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".

### **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 alleged 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).

**Clear and convincing** proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds that 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.

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.

The Respondent is responsible for \$[REDACTED] in unauthorized FAP transactions from August 1, 2014, through July 31, 2016, at Larry's Bait & Sport.

Respondent's medical evidence indicates that Respondent has a history of social anxiety disorder, post traumatic stress disorder, bulimic eating disorder, as well as chronic musculoskeletal pain, irritable bowel syndrome, and a history of cervical cancer. Insufficient evidence was provided to establish that Respondent was not able to purchase FAP benefits on her own or that Respondent was not aware of her responsibilities regarding FAP purchases. The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that respondent is responsible for unauthorized FAP transactions at Larry's Bait & Sport and engaged in FAP trafficking in contravention of Department policy. The Department has established its case by its care by clear and convincing evidence.

**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 solicit for/receive an OI of FAP benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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

LL/bb



**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**

Lindsay Miller  
125 E. Union St 7th Floor  
Flint, MI 48502

Genesee County (Union Street), DHHS

Policy-Recoupment via electronic Mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

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