



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 14, 2018  
MAHS Docket No.: 18-005347  
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 Patrick Waldron, 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 1-56 were 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 11, 2018, to establish an OI of benefits received by Respondent, as a result of Respondent having allegedly committed an IPV.
2. A check of the Respondent, April Alexander, IG 311 showed a several transactions from February 18, 2017, to February 22, 2017, totaling \$ [REDACTED] at several different stores in the [REDACTED], MI area.
3. Receipt's from [REDACTED] were unable to be obtained due to more than a year passing for [REDACTED], and the [REDACTED] is no longer open.
4. Per the Respondent's IG 301 report, a total of five days was noted that theses EBT transactions took place, averaging \$ [REDACTED] per day of FAP purchases.
5. There were back to back transactions at all of the above-mentioned stores.
6. A check of the Respondent's benefit summary in Bridges showed that the Respondent received the *Barry v Lyon* lump sum payment of \$ [REDACTED] on February 17, 2017.
7. A review of the Respondent's Bridges application showed that they reported a group size of one.
8. A check of EPPIC showed that Respondent has had an Authorized Representative (AR).
9. Further review of EPPIC showed that it was the Respondent's EBT card used during the alleged fraud period, and not the AR EBT card.
10. Video evidence was no longer available for transactions occurring during the alleged fraud period as the case was referred to OIG on May 1, 2017, and due to more than 30 days passing, the video evidence was no longer available.
11. The Respondent failed to show for the scheduled interview on April 24, 2018, at 10:00am, at the [REDACTED] County DHHS Office.
12. The Respondent has not contacted the Agent to date regarding this investigation, nor has the interview letter been returned as undeliverable
13. Respondent reported mental impairments or disability.

14. 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.
15. This was Respondent's first alleged IPV.
16. 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).

In this case the Department put \$ [REDACTED] in FAP benefits on Petitioner's Bridge card in a lump sum payment. The Department determined that Respondent was entitled to receive the lump sum as a result of the *Barry v Lyon* lawsuit that Respondent was entitled to receive for December 30, 2012, to January 9, 2015. There is no law or rule presented by the Department at the hearing that states that Petitioner is not allowed to purchase food items in a lump sum purchase or in a series of large purchases. Though the purchases appear irregular, there is no evidence presented to this Administrative Law Judge that Respondent purchased the large amounts to traffic food items or to attempt to traffic food items. The OIG agent never indicated how such large purchases are indicative of FAP trafficking, beyond the conclusory statement that such purchases appear irregular. Even when taking the evidence in the light most favorable to the Department and in the absence of Respondent at the hearing, the Department has not established a FAP trafficking case. There is no evidence of receipts of inappropriate items being purchased.

There is insufficient evidence on the record of this Respondent ever selling or providing items to anyone else or attempting to do so. [REDACTED] are all stores which have sufficient non-perishable food or grocery items in the stores that make it feasible for Respondent to have purchased over \$2,000.00 worth of groceries or approved food items in five days. Though such purchases would be highly irregular under normal circumstances (because most FAP benefit recipients do not have \$3,000.00 in Food Assistance Program benefits placed on their EBT cards at one time), the Department has not established by clear and convincing evidence that Respondent has committed an IPV or that Respondent was not entitled to receive the benefits or use them as Respondent saw fit, as long as the purchases were for designated food items. The video evidence was not available and not presented at the hearing. Just because a

case is flagged for investigation or large amounts are used does not mean that sufficient evidence exists to establish FAP trafficking or attempted trafficking. Respondent was entitled to the benefits and used legitimate stores to make large amount purchases. An Authorized Representative or Respondent had the right to purchase food stuffs. The Department's case cannot be upheld under the circumstances.

### **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 not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department has not established by clear and convincing evidence that Respondent trafficked or attempted to traffic FAP benefits.
3. The Department has not established by clear and convincing evidence that Respondent was not entitled to spend FAP benefits in the fashion that Respondent wanted to, as long as the purchases were for approved food items.
4. The Department has not established by clear and convincing evidence that Respondent failed to purchase approved food items.
5. The Department's request for recoupment of \$ [REDACTED] is **DENIED**.
6. The Department's request for a twelve-month disqualification and an IPV is **DENIED**.

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**

Barbara Hamilton  
1040 South Winter Street  
Ste. 3013  
Adrian, MI 49221

Lenawee County, 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]