



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

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Date Mailed: February 27, 2019  
MAHS Docket No.: 18-000799  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**REMAND HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on June 21, 2018, from Lansing, Michigan. The Department was represented by Nicholas Sultana, Regulation Agent of the Office of Inspector General (OIG). Respondent, her husband ██████████, and her son ██████████ testified. On July 13, 2018, a Hearing Decision for Intentional Program Violation was issued. On July 13, 2018, the hearing decision was returned by the US Postal Service as undeliverable. On August 31, 2018, the hearing record was certified. On December 19, 2018, the Third Judicial Circuit Court of Wayne County issued an Order Affirming Intentional Program Violation and Disqualification from Food Assistance Program (FAP) For 12 Months and Remanding Case to The Michigan Administrative Hearing System For A Determination And Analysis Of FAP Overissuance Amount.

**ISSUE**

Did the Department establish the overissuance of Food Assistance Program (FAP) benefits received by Respondent by clear and convincing evidence?

**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 a Redetermination (DHS-1010) form received by the Department on November 7, 2014, the Respondent acknowledged her 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, pp 12-17.
2. Respondent used Food Assistance Program (FAP) benefits at a business known to engage in benefit trafficking. Exhibit A, pp 58-62.
  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 90-103.
  4. Respondent made purchases totaling \$5,494.79 that are consistent with known patterns of Food Assistance Program (FAP) trafficking. Exhibit A, pp 27-31.
  5. The Department's OIG filed a hearing request on January 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.
  6. On January 26, 2018, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$5,494.79 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
  7. This was Respondent's first established IPV.
  8. 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.

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

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.

A recipient claim is an amount owed because benefits that are overpaid or benefits that are trafficked. 2 CFR 273.18(a)(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).

On January 26, 2018, the Department filed a hearing request with MAHS to establish that Respondent received an overissuance of FAP benefits from trafficking in FAP benefits, which fits the Department's definition of an IPV in BAM 720. The Department's Office of the Inspector General (OIG) had completed an investigation into Respondent's use of FAP benefits and alleged that Respondent had trafficked in FAP benefits totaling

\$5,494.79. The Department determined that Respondent had received an overissuance in this amount as directed by BAM 720, which states that the amount of overissuance for trafficking-related IPV is the value of the trafficked benefits. BEM 720, p 8.

On June 21, 2018, a hearing was held to determine whether Respondent received an overissuance of FAP benefits, whether Respondent was responsible for an IPV, and whether Respondent should be disqualified from FAP due to the IPV. Respondent was found responsible for an IPV and the Department was ordered to recoup the overissuance. On December 4, 2018, the Third Judicial Circuit Court of Wayne County found that the hearing decision is supported by competent, material, and substantial evidence, and that Respondent committed an IPV of the FAP and is disqualified from the FAP for 12 months. The case was remanded to MAHS for a determination and further analysis on how the FAP overissuance amount of \$5,414.81 was reached.

The Department presented evidence during the hearing that Respondent made purchases at a business known to engage in FAP trafficking. The license to accept FAP benefits for that business was revoked by the federal Food and Nutrition Service. Respondent did not dispute the evidence that her FAP benefits were used to make purchases at that business but did dispute that her purchases were FAP trafficking.

The Department presented evidence during the hearing that the business where the alleged trafficking took place fits the definition of a convenience store as defined by the Food and Nutrition Service. This business was investigated by the Food and Nutrition Service, who determined that the available inventory on hand at this business was insufficient to handle the volume of high value purchases being made at that business.

Respondent's FAP benefits were used to make 73 purchases at that business from August 31, 2015, through March 4, 2017. The total amount of FAP benefits transferred in those purchases was \$6,302.77.

The Food and Nutrition Service flagged transactions at this business higher than \$85.99 because the known inventory of that business could not reasonably support such a volume of purchases. The circumstances of these high value purchases make it likely that purchasers were receiving some consideration other than allowable food items.

The Food and Nutrition Service also flagged transactions ending in an even 0 cents, 50 cents, and 99 cents, alleging that it was statistically unlikely that purchases ending in such regular amounts would occur as frequently as what was observed at this business. This Administrative Law Judge found that the Department did not present evidence so clear, direct, weighty, and convincing that a conclusion can be drawn that low volume purchases ending in 0 cents or 99 cents were not legitimate purchases of allowable food items. The evidence establishes that Respondent made 20 purchases ending in 0 cents, 50 cents, or 99 cents. Half of those purchases were in amounts exceeding \$85.99, and therefore were suspected of being trafficking for more than one reason.

Some of Respondent's purchases were not flagged as being excessively high for a convenience store, and did not end in a regular number of cents, but were flagged

because they were made within 24 hours of another purchase. These purchases were flagged because the total of the purchases made within a 24-hour period were considered as a single purchase. Of these purchases made within 24 hours of another purchase, only one of the purchases was for less than \$85.99, making them also suspicious as high-volume purchases. That one purchase not considered a high-volume purchase was for \$69.50, and therefore was flagged as suspicious because it ended in 50 cents.

In the July 13, 2018, hearing decision, this Administrative Law Judge determined that the Department had failed to establish that the transactions of \$15 or less that were flagged solely because they ended in 0 cents or 99 cents were FAP trafficking.

Upon further review of the data provided to the Department by the Food and Nutrition Service, this Administrative Law Judge finds that four transactions less than \$85.99 and ending in 50 or 99 cents that were not clearly FAP trafficking based on the hearing record. The Department did not allege that all transactions at this business were fraudulent, and insufficient evidence was presented to establish that transactions between \$35.99 and \$69.50 were clearly FAP trafficking.

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 that 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 (October 1, 2017), pp 1-22.

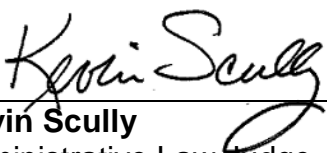
This Administrative Law Judge also finds that the Department established by clear and convincing evidence that Respondent received an overissuance of Food Assistance Program (FAP) benefits in the amount of \$4,214.32 through trafficking those benefits in the amount \$4,214.32, which the Department is required to recoup.

**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. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$4,214.32.
2. The Department is ORDERED to initiate recoupment procedures for the amount of \$4,214.32 in accordance with Department policy.

KS/dh

  
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**Kevin Scully**  
Administrative Law Judge  
for Robert Gordon, 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**

Keisha Koger-Roper  
12140 Joseph Campau  
Hamtramck, MI 48212

Wayne County (District 55), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

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██████ MI ██████████

**Authorized Hearing Rep.**

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