



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: April 12, 2019  
MAHS Docket No.: 18-013553  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**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 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 April 10, 2019, from Lansing, Michigan.

The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Ms. McClellan testified on behalf of the Department. The Department submitted 107 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

**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 benefits for 12-months?

**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 December 4, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits. [Dept. Exh. 1, 3-4].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 90].
4. Respondent was aware that misusing his benefits by allowing a retailer to buy his food benefits in exchange for cash was a violation of state and federal laws. [Dept. Exh. 93-106].
5. Respondent did not have an apparent mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 61].
6. In October 2017, [REDACTED] [REDACTED] [REDACTED] (hereinafter "market") was the target of a United States Department of Agriculture Food and Nutrition Service (USDA-FNA) investigation which determined that FAP trafficking was occurring at the market. [Dept. Exh. 13-15].
7. In October 2017, [REDACTED] [REDACTED] [REDACTED] was permanently disqualified from participation in the SNAP. FAP is the State of Michigan's acronym for SNAP. [Dept. Exh. 11-12].
8. The Respondent made two transactions at the market fitting the FNS criteria for trafficking. The first transaction for \$ [REDACTED] was made on [REDACTED] [REDACTED] 2016 and the second transaction for \$ [REDACTED] was made on [REDACTED] [REDACTED], 2017. These two transactions were in excess of the \$26.73 transaction amount set by the USDA-FNA. [Dept. Exh. 3, 47].
9. The Respondent did not appear to contest the allegations contained in the investigation or attached exhibits.
10. The Department's OIG indicates that the time it is considering the fraud period is December 1, 2016 through February 28, 2017. [Dept. Exh. 1, 3-4].
11. During the fraud period, Respondent was responsible for \$385.55 in unauthorized FAP transactions at the [REDACTED] [REDACTED] [REDACTED] [Dept. Exh. 3-4].
12. The Department alleges that Respondent received an overissuance of FAP benefits in the amount of \$385.55. [Dept. Exh. 3-4].
13. This was Respondent's first alleged IPV. [Dept. Exh. 1, 3-4, 91].

14. 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 October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
  - the total amount is less than \$500, and
    - the group has a previous Intentional Program Violation, or
    - the alleged Intentional Program Violation involves Food Assistance Program 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 (10/1/2017).

### **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. 7 CFR 271.2; BAM 720, p 1 (emphasis in original).

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1. "Trafficking" is the buying or selling or otherwise effecting an exchange of FAP 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. BAM 700, p 1 (10/1/2018).

A person is disqualified from receiving benefits for the duration of their penalty period when any of the following have occurred:

- An administrative hearing decision has determined the person was found to have committed an IPV.
- A disqualification agreement has been signed agreeing to an IPV disqualification.
- A court decision has found the person to be guilty of an IPV. BEM 203, p 4(5/1/2018).

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by: (1) the 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, p 8 (10/1/2017). This can be established through circumstantial evidence. BAM 720, p 8.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p 16. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720, p 16. If the court does not address disqualification in its order, the standard period applies. BAM 720, p 17.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an IPV. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV because he engaged in unlawful transactions using his Electronic Benefit Transfer (EBT) card at the [REDACTED] [REDACTED] [REDACTED] (the market), which was under a federal investigation for FAP trafficking. The Department alleges that Respondent was engaged in FAP trafficking based on records that showed he had several unauthorized transactions at the store during the alleged fraud period. Respondent did not appear for the hearing to dispute the allegations.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In the present case, the record evidence shows that the market was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. This is supported by the photographs of the store which showed that the market was a convenience store with limited eligible food

stock items that were not expired. The photographs in the record revealed that the market provided only a limited inventory of eligible items including, but not limited to snack foods, milk, juice, soft drinks, and related items. The record evidence also shows that the store lacks sufficient eligible food items in its inventory to support high dollar transactions, but it engaged in multiple high-dollar transactions using EBT cards that were above the average for similar stores in the same general geographical area.

The Department OIG Agent has established that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices. This is supported by the record evidence which revealed that Respondent, during the fraud period, used his EBT card at the market and made two unauthorized purchases. The IG-312 EBT history records showed that Respondent engaged in EBT transactions that were well above the average transaction for that type of store. The records also show that the size of the market coupled with the number of items in the store inventory demonstrated that Respondent's EBT transactions were not lawful. The Administrative Law Judge finds the evidence is clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. Consequently, the Department OIG Agent has established that Respondent committed an IPV through trafficking with respect to the FAP program.

### **Disqualification**

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(5); 7 CFR 273.16(b)(11); BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. 21 USC 862a; 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m); 7 CFR 273.11(c)(1); BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee only if there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

Because this was Respondent's first IPV, Respondent is disqualified for 12 months.

### **Overissuance**

A FAP recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10). When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1.

Here, the Department has established that Respondent was aware that misuse of his food benefits is a violation of state and federal laws for which he may be disqualified from the program, fined, put in prison, or all three and repayment of the food benefits.

Based on the evidence presented and the credible testimony of the Resident Agent, the Administrative Law Judge finds that the OIG has established, under the clear and convincing standard, that Respondent committed an IPV in this matter by trafficking his FAP benefits.

### **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 receive an overissuance of program benefits in the amount of \$385.55 from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$385.55 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

VLA/nr



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Vicki L. Armstrong  
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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

Wayne 17 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

**DHHS**

Tara Roland 82-17  
8655 Greenfield  
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**Respondent**

[REDACTED]  
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