

# STATE OF MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS DIRECTOR



Date Mailed: June 10, 2019 MOAHR Docket No.: 19-000889

Agency No.: Petitioner: OIG

Respondent:

**ADMINISTRATIVE LAW JUDGE: Kevin Scully** 

## 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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on May 14, 2019, from Lansing, Michigan. The Department was represented by Jennifer Allen, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

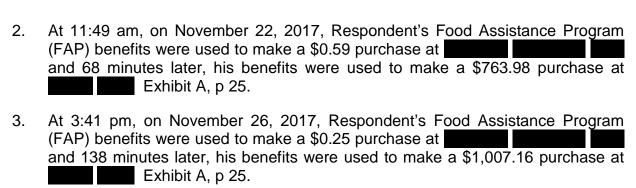
## <u>ISSUES</u>

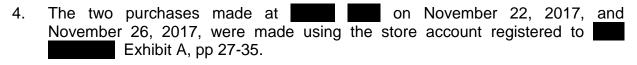
- 1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
- 2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
- 3. Should Respondent be disqualified from receiving Food Assistance Program (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:

 On a Redetermination (DHS-1010) received by the Department on March 21, 2017, the Respondent acknowledged his 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 15-22.





- 5. Exhibit A, p 36.
- 6. The items purchased on November 22, 2017, and November 26, 2017, at Club were items that could be re-sold at a retail convenience store. Exhibit A, pp 27-35.
- 7. The Department's OIG filed a hearing request on January 8, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
- 8. On January 8, 2019, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,771.14 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
- 9. This was Respondent's first established IPV.
- 10. 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 Ols 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 (October 1, 2017), pp 12-13.

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

#### <u>Overissuance</u>

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 (October 1, 2018), p 1.

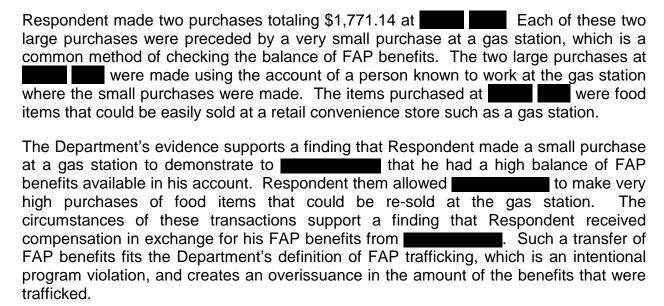
Federal regulations provide the following definition of in intentional program violations:

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).

Respondent acknowledged his duties and responsibilities including the duty to use FAP benefits in a manner consistent with the Food and Nutrition Act of 2008 on a Redetermination (DHS-1010) form received by the Department on March 21, 2017. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.



The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (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.

Trafficking includes the buying, selling or stealing 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. Trafficking also includes attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. BAM 700, p 2.

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See Foodland Distributors v Al-Naimi, 220 Mich App 453 (1996), p 381.

This Administrative Law Judge finds that the Department established by clear and convincing evidence that the Respondent intentionally used Food Assistance Program (FAP) benefits in a manner other than 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.

# **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 16.

The record evidence indicates that this is Respondent's first established IPV.

The Department has established an Intentional Program Violation (IPV).

#### **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 OI of Food Assistance Program (FAP) benefits in the amount of \$1,771.14.

- 3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,771.14 in accordance with Department policy.
- 4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/dh

Kevin Scull

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules Reconsideration/Rehearing Request P.O. Box 30639 Lansing, Michigan 48909-8139 **DHHS** Jeanette Cowens

2524 Clark Street Detroit, MI 48209

Wayne County (District 41), DHHS

Policy-Recoupments via electronic mail

L. Bengel via electronic mail

**Petitioner** OIG

PO Box 30062

Lansing, MI 48909-7562

Respondent

