



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: May 17, 2019  
MOAHR Docket No.: 19-001578  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

**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 May 7, 2019, from Lansing, Michigan. The Department was represented by Regulation Agent of the Office of Inspector General (OIG) Patrick Waldron.

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 Department's Exhibit A.78 was admitted.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) or Supplemental Nutritional Assistance Program (SNAP) 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 FAP benefits for 12 months?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. At all relevant times applicable to the issues herein, Respondent has been a beneficiary of the FAP/SNAP program.
2. On [REDACTED] [REDACTED] 2015, Respondent completed a redetermination application acknowledging that she understood the responsibilities for the bridge card use. Included in her acknowledgments was the receipt of the Petitioner's brochure titled "How to Use Your Bridge Card." Respondent acknowledged that she understood that trafficking of benefits can result in prosecution for fraud and that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash or nonfood items.
3. Respondent did not have any physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
4. From December 9, 2016, through July 9, 2017, Respondent used her FAP benefits at [REDACTED] located at [REDACTED], [REDACTED] Michigan. The Department's evidence shows that after reviewing Respondent's FAP usage, a history specific to this store shows Respondent's shopping patterns unjustifiable based on inventory of the store, and additional transactions were included in the overissuance unauthorized transaction of \$501.50. Five transactions were suspect, including three noted to be event dollar transactions of \$100.00. The even dollar amount has been determined by the FNS to be trafficking consistent with FAP trafficking laws and regulations.
5. The USDA/United States Food and Nutrition Service (FNS) SNAP program investigated [REDACTED] finding the store in violation of the SNAP program and revoking its SNAP authority under 7 CFR 271.2 and charged the store with trafficking. Exhibit A.
6. FNS identified numerous transactions by Respondent as indicative of trafficking and notified the State of Michigan SNAP program to pursue an investigation. Exhibit A.
7. The USDA/FNS investigation resulted in an evidentiary file being forwarded to the State of Michigan for prosecution under the state FAP policy rules and in conjunction with federal regulations for overissuance and recoupment. (Testimony of OIG witness.)
8. On January 30, 2019, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent because of Respondent having allegedly committed an IPV.

9. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

### **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.

#### **Intentional Program Violation**

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 1, 2014), p. 1.

Trafficking is:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700 (May 1, 2014), p. 2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p 1; see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence, which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)). Intent may be inferred by circumstantial evidence.

In this case, I find that the Department has met its burden. A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP

transactions at the [REDACTED] as documented by the USDA Food and Nutrition Service, including an unusual number of transactions ending in the same cents value. Petitioner does not need to prove explicit intent; it may be inferred with circumstantial evidence.

### **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. 16. Clients are disqualified for ten years for an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. A disqualified recipient remains a member of an active group if he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

This was Respondent's first 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 OI. BAM 700, p. 1. The OI amount for trafficking-related IPV's is the value of the trafficked benefits (attempted or actually trafficked) as determined by: (1) a 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. This can be established through circumstantial evidence. BAM 720, p. 8. As such, Respondent's questions regarding explicitly established intent is not required.

Here, the trafficking amount is \$501.50. Respondent is responsible for \$501.20 for the time period from December 9, 2016, to July 9, 2017, for ineligible use of FAP benefits trafficked at [REDACTED] of [REDACTED] Michigan.

### **DECISION AND ORDER**

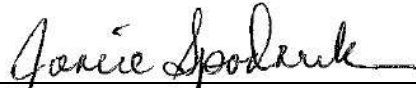
This Administrative Law Judge based upon the above clear and convincing evidence of the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 \$501.50.

The Department is ORDERED to initiate recoupment/collection procedures for \$501.50 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months in accordance with federal and state law.

JS/dh



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**Janice Spodarek**  
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 Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Deborah Little  
5131 Grand River Ave.  
Detroit, MI 48208

Wayne County (District 49), 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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