



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: July 17, 2019  
MOAHR Docket No.: 19-003083  
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 Petitioner), 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 July 10, 2019, from Lansing, Michigan. The Department was represented by Maria Walters, Regulation Agent of the Office of Inspector General (OIG).

Petitioner's Exhibit A pages 1-134 were admitted as 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).

### **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 FAP?

### FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on March 19, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill FAP use requirements.
5. The Office of Inspector General conducted a social media search and found [REDACTED] (a.k.a. Respondent) had posted to Facebook, "200 in stamps who need it" and "Who Need A Bridge Card \$287".
6. On May 5, 2018, the subject, Respondent, posted on his Facebook profile page "[REDACTED]", "200 in stamps who need it". The corresponding comments show those interested in the post as well as [REDACTED] commenting.
7. On May 11, 2018, the subject, Respondent, posted on his Facebook profile page "[REDACTED]", "Who Need A Bridge Card \$287". The corresponding comments show those interested in the post.
8. On May 14, 2018, the subject, Respondent, posted on his Facebook profile page "[REDACTED]", "My Birthday [REDACTED]st I'm About To Turn [REDACTED] Wby!? #Unk". The corresponding comments show those interested in the post.
9. A search inquiry was made on Respondent's date of birth [REDACTED]/1996 on BRIDGES, the Michigan State Police Mugshot Profile, Michigan State Police Secretary of State Profile, and Michigan Department of Corrections-OTIS Profile, and they were a match for the Respondent.
10. Also, the tattoos seen in Respondent's Facebook profile which include the "Michigan" tattoo on the bicep and the "Pops" tattoo on his hand, match those found on the description of tattoos on the Respondent's Michigan Department of Corrections-OTIS profile.
11. On May 16, 2018, the subject, Respondent's IG-311 EBT History shows that the entire EBT monthly amount of \$192.00 was used in one single transaction at

██████████ in ████████ just days after the subject posted he had EBT benefits for sale.

12. It should be noted that from January 1, 2017 – November 21, 2018, the subject never made any other transactions at G ██████████.
13. Photos were viewed of Respondent's Facebook profile page. The Facebook photos were compared to Respondent's photos on file with the Michigan State Police-Mugshot Profile and Secretary of State Profile, and Michigan Department of Corrections. The photos found appear to be that of the same person. Due to this information, it can be concluded that the subject, Respondent, is AKA "██████████" on the Facebook profile found.
14. On February 28, 2019, an Interview Letter was sent out to Respondent's last known mailing address # ██████████ ████████ MI, ████████. The interview was scheduled for March 19, 2019 at 10:00 am at the Hamtramck DHHS office.
15. The Department's OIG indicates that the time period it is considering the fraud period is May 5, 2018 -May 16, 2018 (fraud period).
16. During the fraud period, Respondent was issued \$487 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
17. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$487.
18. This was Respondent's **first** alleged IPV.
19. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service as undeliverable.
20. 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.

### 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).**

**Clear and convincing** proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Respondent is responsible for unauthorized Food Assistance Program transactions and engaged in FAP trafficking in contravention of Department policy. The Department has established its case by its care by clear and convincing evidence.

### **DECISION AND ORDER**

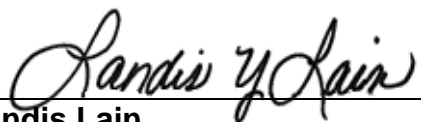
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did solicit for/receive an OI of FAP benefits in the amount of \$487.

The Department is ORDERED to initiate recoupment/collection procedures for \$487 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months beginning July 10, 2019.

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
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**

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**

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