



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: October 7, 2019  
MOAHR Docket No.: 19-004982  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [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 September 11, 2019, from Lansing, Michigan.

The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Agent McClellan testified on behalf of the Department and submitted 72 exhibits. The exhibits 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 FAP 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 May 7, 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 for 12 months from receiving FAP benefits.
3. Respondent was aware of the responsibility to not traffic FAP benefits indicated by her signature on her FAP application dated [REDACTED] [REDACTED] 2017. [Dept. Exh. 21-63].
4. On May 6, 2018, Respondent posted, "[REDACTED] [REDACTED] I am back in Detroit, if you still want \$100.00 of [REDACTED] [REDACTED] and [REDACTED] foodstamps! Until you get some more on your bridge card," on her Facebook (FB) page titled, [REDACTED] [REDACTED]. Respondent also commented on her FB page, "[REDACTED] [REDACTED] we can arrange for you to get some too, the Lord blessed them with \$5,714.00. Inbox me #Sharingthewealth #Sharingiscaring #The Lordblessedustoblessothers." [Dept. Exh. 4, 12].
5. A search of Bridges (Department's computer program) revealed Respondent was the mother of three children named, [REDACTED] [REDACTED] and [REDACTED] [Dept. Exh. 4, 19].
6. A FB selfie was compared to Respondent's photograph on file with the Secretary of State and appeared to be the same person. [Dept. Exh. 4, 15-16].
7. A search of Respondent's Electronic Benefit Transaction history showed that on February 17, 2018, Respondent had \$5,417.60 on her EBT card, similar to the number written on the FB post. [Dept. Exh. 4, 17].
8. A Bridges inquiry of Respondent's name shows she had an active assistance case during the alleged fraud period. [Resp. Exh. 64].
9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
10. The Department's OIG indicates that the time period it is considering the fraud period is May 6, 2018.
11. This was Respondent's first alleged IPV. [Dept. Exh. 66].
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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. Trafficking is the attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food. BAM 700, p 1 (10/1/2015).

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, Respondent attempted to sell FAP benefits illegally by posting a message on Facebook on May 6, 2018. Respondent posted "[REDACTED] I am back in Detroit, if you still want \$100.00 of [REDACTED] and [REDACTED] foodstamps! Until you get some more on your bridge card". The Facebook account is listed under the name [REDACTED]. The profile picture for the Facebook account is strikingly similar to Respondent's driver's license photo. The undersigned Administrative Law Judge finds that Respondent trafficked food assistance benefits by attempting to obtain benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2).

### **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.

In this case, Respondent trafficked FAP benefits. This was Respondent's first IPV; therefore, a 12-month disqualification is required.

### **Overissuance**

For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or **attempted** to be trafficked. BAM 700, pp 1-2, emphasis added. The undersigned Administrative Law Judge finds that Respondent trafficked FAP benefits by attempting to obtain benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2) in the amount of \$100.00.

Based on the evidence presented and the credible testimony of the Resident Agent, the Administrative Law Judge finds the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter of \$100.00 by trafficking her food program benefits on Facebook.

### **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 \$100.00 from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$100.00 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 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**

Courtney Jenkins  
22 Center Street  
Ypsilanti, MI  
48198

Washtenaw County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

**Respondent**

[REDACTED]  
MI