



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: December 3, 2018  
MAHS Docket No.: 18-008446  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 3-way telephone hearing was held on November 20, 2018, from Lansing, Michigan. The Department was represented by Chris Tetloff, Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared via telephone and represented herself. Department Exhibit 1, pp. 1-83 was received and admitted.

**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 the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on ██████████, 2018, 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 was aware of the responsibility to not traffic or attempt to traffic benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] 2016, through [REDACTED], 2016 (fraud period).
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
8. This was Respondent's first IPV.
9. 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.
10. Respondent posted on Facebook using a profile name [REDACTED] [REDACTED] on [REDACTED] [REDACTED], 2016 "I got some \$300 for, \$150 whoever wanna drive up here im in Alpena mi if someone interested ill throw yall an extra \$50 so that's 350 stamps for, \$150". (Ex. 1, p. 50)

### **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, 2014, 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 \$500.00 or more, or
  - the total amount is less than \$500.00, 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 (1/1/16), p. 12-13.

### **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 (October 2015), p. 7; BAM 720, p. 1.

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

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, p. 1 (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, the Department presented ample evidence that Respondent attempted to traffic FAP benefits by offering to sell her FAP benefits on Facebook. Specifically, Respondent posted on Facebook using a profile name [REDACTED] [REDACTED] on [REDACTED], 2016 “I got some \$300 for, \$150 whoever wanna drive up here im in Alpena mi if someone interested ill throw yall an extra \$50 so that’s 350 stamps for, \$150”. (Ex. 1, p. 50) Respondent’s solicitation and the specificity in those requests are sufficient to prove by clear and convincing evidence of attempted trafficking by the Respondent. BAM 720 The Department presented clear and convincing proof that Respondent attempted to traffic benefits. 7 CFR 271.2 Respondent testified that she had recently relocated to Alpena after fleeing a violent relationship when she made the post on Facebook and that she wasn’t thinking clearly. Respondent credibly testified that she did not follow through and exchange her FAP benefits for cash. Respondent failed to establish that she had a mental impairment that precluded her from understanding her rights and responsibilities.

### **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. 1. 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. 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.

In this case, this was respondent’s first IPV therefore a 12-month disqualification from receipt of FAP benefits 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.

**(2) Trafficking-related claims.** Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

- (i)** The individual's admission;
- (ii)** Adjudication; or
- (iii)** The documentation that forms the basis for the trafficking determination 7 CFR 273.18(c)(2)

In this case, the Department presented insufficient proof that Respondent actually trafficked FAP benefits. The Department presented insufficient proof that Respondent sold her FAP benefits in exchange for money. Substantial proof was presented that Respondent attempted to traffic benefits by offering to sell her benefits but there was insufficient proof that Respondent received money in exchange for his benefits. There

was also insufficient proof presented that someone other than Respondent used Respondent's FAP benefits. Pursuant to 7 CFR 273.18(c)(2) no basis for a claim against Respondent was established.


### **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.

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

AM/nr

  
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Aaron McClintic  
Administrative Law Judge  
for Nick Lyon, 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

**DHHS**

Barbara Schram - 4  
711 West Chisholm St.  
Alpena, MI  
49707

Alpena County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
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48909-7562

**Respondent**

[REDACTED]  
[REDACTED], MI  
[REDACTED]