



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]

Date Mailed: September 24, 2019  
MOAHR Docket No.: 19-004961  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

### **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 Detroit, Michigan. The Department was represented by Philip Giuliani, Regulation Agent of the Office of Inspector General (OIG).

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**

Is the Department entitled to recoup/collect Food Assistance Program (FAP) benefits from Respondent?

### **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 [REDACTED], 2019, to establish it is entitled to recoup/collect benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent was a recipient of FAP benefits issued by the Department.

3. Respondent was aware of the responsibility to use her FAP benefits for lawful purposes.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2013 through January 31, 2015 (fraud period).
6. During the fraud period, the Department alleges that Respondent trafficked \$1,993 in FAP benefits.
7. The Department alleges it is entitled to recoup/collect FAP benefits in the amount of \$1,993 from Respondent.
8. A notice of hearing was mailed to Respondent at the last known address and was 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, 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 (October 2017), pp. 12-13

### **Intentional Program Violation**

Suspected IPV means an overissuance 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 2018), 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.

The Department submitted a request for hearing to establish that Respondent committed an IPV as a result of trafficking her FAP benefits. The Department requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months. Subsequent to the hearing request, Respondent submitted a signed Waiver of Disqualification Hearing to the Department. As a result, the Department requested to withdraw the portion of the hearing request related to the disqualification issue. As such, the Department's request for hearing related to the disqualification is **DISMISSED**.

### **Recoupment/Collection**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the benefits. BAM 700, p. 1. The amount of benefits the Department is entitled to recoup/collect for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or

(iii) 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, which can be established through circumstantial evidence. BAM 720, p. 8; 7 CFR 273.18(c)(2). The Department testified that it was still seeking a recoupment/collection order due to Respondent's trafficking of FAP benefits. As a result, the Department presented evidence to establish that Respondent trafficked her FAP benefits.

In this case, the Department alleges that Respondent committed an IPV by trafficking her FAP benefits. Specifically, the Department alleged that Respondent allowed another individual to utilize her FAP benefits in exchange for cash. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (May 2014), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2015), p. 66. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2015), p. 3. The federal regulations define trafficking to include "attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 CFR 271.2.

In support of its contention that Respondent committed an IPV, the Department presented a report completed by the Michigan Department of State Police. The report states that an individual by the name of ██████████ was investigated for benefit fraud. ██████████ admitted that he utilized numerous Electronic Benefits Transfer (EBT) benefit cards to purchase items that were later resold at party/liquor stores. ██████████ stated that the benefit cards were used at ██████████ to purchase items such as Red Bull and candy, which were later resold at the party/liquor stores. ██████████ admitted that he received the EBT cards from an individual by the name of ██████████. The report also contains an interview with ██████████, who admitted to purchasing FAP benefits from various individuals for 50 cents on the dollar, and then providing those EBT benefit cards to ██████████.

The Department retrieved all of the EBT benefit card numbers used to make purchases with ██████████ membership. The Department also presented Respondent's Electronic Payment Processing and Information Control (EPPIC) summary, showing her EBT benefit card was one of the cards used to make purchases at ██████████ by ██████████. The records show that between the period of October 1, 2013 and January 31, 2015, \$1,993 was spent using Respondent's FAP benefits at ██████████ with ██████████ membership. The Department also submitted Respondent's FAP transaction history showing purchases made using her EBT benefit

card by date, time and amount. Respondent's FAP benefit usage history corresponds with the transaction details provided by [REDACTED].

Additionally, the Department submitted documents retrieved from [REDACTED] that show the items purchased using Respondent's FAP benefits. The majority of the items purchased using Respondent's FAP benefits were candy and Red Bull. The Department highlighted that the items purchased utilizing Respondent's FAP benefits were the same products that [REDACTED] admitted to reselling to party/liquor stores.

The Department did not present any surveillance footage showing Respondent was not the individual that completed the transactions at [REDACTED]. However, the highly unusual nature of the transactions alone is indicative of trafficking. It is not reasonable that Respondent would spend such a sizable sum of her FAP benefits on an excessively large amount of energy drinks and candy. It is also significant that the purchases were made using [REDACTED] [REDACTED], who admitted to being complicit in FAP benefit fraud. Thus, the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits. The transactions identified as trafficking were in the amount of \$1,993. Thus, the Department established that it is entitled to recoup/collect FAP benefits in the amount of \$1,993 from Respondent.

### **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 Respondent trafficked FAP benefits in the amount of \$1,993.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$1,993, less any amounts already recouped/collected, in accordance with Department policy.

The Department's request for hearing related to the disqualification from the FAP program is **DISMISSED**.

EM/cg



---

**Ellen McLemore**  
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

**Via Email:**

MDHHS-Wayne-49-Hearings  
OIG Hearings  
Recoupment  
MOAHR

**Respondent – Via First-Class Mail:**

████████████████████  
████████████████████  
████████████████████