



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 13, 2019  
MOAHR Docket No.: 19-006564  
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 5, 2019, from Detroit, Michigan. The Department was represented by Darren Bondy, 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**

1. Is the Department entitled to recoup/collect Food Assistance Program (FAP) benefits from Respondent?
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 [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. 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 use FAP benefits for lawful purchases. Respondent was also advised to report changes in residency to the Department within 10 days.
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 March 1, 2012 through March 31, 2013 (fraud period).
7. During the fraud period, the Department alleges that Respondent trafficked \$303.92 in FAP benefits.
8. During the fraud period, the Department alleges that Respondent was issued \$1,600 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 due to lack of residency.
9. The Department alleges that it is entitled to recoup/collect FAP benefits in the amount of \$1,903.92 from Respondent.
10. This was Respondent's first alleged IPV.
11. 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), p. 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 (January 2016), 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 273.16(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 alleges that Respondent committed an IPV because she trafficked her FAP benefits at [REDACTED], located at [REDACTED] Alpena, Michigan (Store). 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, p 2. 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.

The Department presented evidence that the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) charged Store with trafficking and that it was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). The Department also presented a Report of Investigation completed by the USDA OIG. Per the report, an undercover investigation was completed where agents were able to successfully traffic FAP benefits at Store. Store exchanged ineligible items for FAP benefits. Additionally, interviews were completed where customers and employees admitted to exchanging FAP benefits for ineligible items. To support a trafficking case against Respondent, however, the Department must establish by clear and convincing evidence that Respondent engaged in trafficking when he used his FAP benefits at Store.

In support of its contention that Respondent trafficked her FAP benefits, the Department presented a FAP transaction history for Respondent showing her FAP purchases at Store by date, time, and amount. Respondent’s FAP transaction history at Store showed transactions on March 5, 2012; March 6, 2012; and March 7, 2012, in the amount of \$75.98 and on March 8, 2012 and March 9, 2012, in the amount of \$37.99. Respondent spent \$303.92 at Store within a five-day period with equal transaction values.

The Department testified that the high-priced transactions were not supported by Store’s inventory. The evidence showed that Store was a small convenience store with

a limited inventory of eligible food items. The majority of the items sold at Store consists of automotive supplies, household goods and other ineligible items. The Department also presented documentation showing Store's FAP sales were significantly higher than other stores in the area that were of a similar size and inventory.

A review of Respondent's transactions at Store, in consideration of Store's inventory and layout, was sufficient to establish by clear and convincing evidence that Respondent trafficked at Store. Because the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits, it has established that he committed an IPV in connection with his FAP case.

The Department also alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on August 5, 2010. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do," which explained reporting changes in circumstances, including residency.

The Department also presented Respondent's IG-311 FAP transaction history to show Respondent began using her Michigan-issued FAP benefits in the State of Kentucky beginning on June 6, 2012. Respondent used her Michigan-issued FAP benefits exclusively out of state until March 30, 2013.

Federal Regulations provide with respect to FAP recipient's residency requirements state that:

- (a) *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). *The State agency shall not impose any durational residency requirements.* The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. *Nor shall residency require an intent to reside permanently in the State or project area.* Persons in a

project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan.

First, the Department presented incomplete evidence showing that Respondent was permanently residing in Kentucky. FAP usage alone is insufficient to establish permanent residency. The Department testified that documentation was reviewed indicating Respondent had a fixed address in Kentucky. However, only the IG-311 was provided. Additionally, there was not sufficient evidence provided to show Respondent was permanently living in Kentucky at the time the application was submitted to the Department. The Department cited no federal requirement or regulation that prohibits out of state use of Michigan FAP benefits by a recipient.

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (April 2018), p. 1. In order to be in compliance with the federal regulations, this rule can only apply at application. No evidence was presented that Respondent lacked Michigan residency at the time of either application. BEM 212 also defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212 (January 2017), p. 3. The Department has utilized this language under BEM 212 to establish a loss of residency, but it does not discuss residency for purposes of FAP eligibility, the policy discusses removal from a FAP group. In order for BEM 212 to be in compliance with federal regulations, that language cannot apply to residency. A FAP recipient is free to use their FAP benefits in any state. So long as there was no misrepresentation of residency at the time of application, there can be no IPV for failure to maintain Michigan residency or failure to inform the Department about a change in residency.

Based upon the foregoing, the Department has not established that Respondent committed an IPV of the FAP program by clear and convincing evidence based upon a failure to report a change in residency in the FAP.

### **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. 15; BEM 708 (October 2016), 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; 7 CFR 273.16(b). 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. 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, the Department requested that Respondent be subject to a 12-month disqualification period. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP due to the trafficking of FAP benefits. Therefore, Respondent is subject to a one-year disqualification from her receipt of FAP benefits.

### **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 a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6; 7 CFR 278.18. 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).

As discussed above, the Department presented clear and convincing evidence, through its testimony and Respondent's transaction history, to support its allegation that Respondent trafficked at Store. The Department identified all transactions on Respondent's transaction history at Store in excess of amounts that reasonably could have been expended at Store. These transactions total \$303.92. Therefore, the Department is entitled to recoup and/or collect \$303.92 for trafficked FAP benefits at Store during the fraud period.

The Department also sought the imposition of an IPV and overissuance due to Respondent's lack of Michigan residency. As discussed above, the Department failed to establish that Respondent was ineligible for FAP due to lack of residency. FAP clients are permitted the use of their FAP EBT benefits anywhere that SNAP benefits are accepted. Therefore, the Department has not established a FAP OI or that the Respondent received more benefits than she was entitled to receive due to a lack of residency.

### **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.

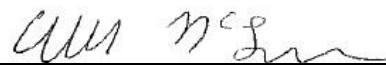
2. Respondent trafficked \$303.92 in FAP benefits.
3. Respondent did not receive an OI in the amount of \$1,600 due to the failure to report a change in residency.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP amount of \$303.92 due to the trafficking of FAP benefits, less any amount already recouped and/or collected.

The Department is ORDERED to delete the OI in the amount of \$1,600 due to the failure to report a change in residency and cease any recoupment and/or collection action.

It is FURTHER ORDERED that the Department personally disqualify Respondent from FAP for a period of 12 months.

EM/cg



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**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-Alpena-Hearings  
OIG Hearings  
Recoupment  
MOAHR

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

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