



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: October 23, 2019  
MOAHR Docket No.: 19-007494  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 October 16, 2019, from Detroit, Michigan. The Department was represented by Daniel Beck, 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. Did the Department establish a claim for trafficked Food Assistance Program (FAP) benefits?
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 [REDACTED], 2019 seeking to establish a claim in the amount of \$650.91 based upon an IPV via trafficked FAP benefits.

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** informed of the responsibility not to buy, sell, trade, exchange, or otherwise traffic FAP 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 April 2014 through November 2014 (fraud period).
7. This was Respondent's **first** alleged IPV.
8. 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.

### **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 OIs 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. 5, 12-13; ASM 165 (August 2016).

### **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 2018), p. 8; 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (e)(6). SNAP is the federal name for the FAP. 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 of the FAP because she trafficked FAP benefits at G & G Mini Market (Store), a small US gas station

or convenience located in Detroit, Michigan. Trafficking 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 (October 2015), p. 3. 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 this case, the Department showed that Respondent was informed of her program rights and responsibilities at the time of Application and given the right to review those rights and responsibilities at the time of her Redetermination on July 23, 2014. As part of the informational packet, Respondent was informed that she could not trade or sell her FAP benefits, use the FAP benefits of someone else, or use her FAP benefits for the purchase of anything other than food, seeds, or plants to grow for the household.

Store was disqualified from participation in the Supplemental Nutritional Assistance Program (SNAP) by the United States Department of Agriculture Food and Nutrition Service (FNS) effective November 5, 2015. The disqualification of Store occurred after a joint investigation was completed by the USDA Office of Inspector General (OIG), Michigan OIG, Michigan State Police Bridge Card Enforcement Team, and Homeland Security Investigations.

To support its position that Store was trafficking benefits, the USDA OIG conducted undercover transactions with the aid of cooperating witnesses between 2012 and 2015. During those undercover operations, the cooperating witnesses sold their FAP benefits to Store in exchange for cash, prepared foods, and cigarettes. The transactions ranged in value from \$36.01 for four packs of Newport cigarettes to \$205.26 for \$90.00 cash and two packs of Newport cigarettes. The transactions were completed by various Store employees. In July of 2015, the USDA OIG executed a search warrant on the premises of Store and found six EBT cards which did not belong to employees of Store, guns, narcotics, and banking records for Store. In July, September, and October of 2015, interviews were completed with Store employees, the Store owner, Store customers, and other individuals affiliated with Store. One employee and at least one customer admitted to completing trafficking transactions at Store including FAP benefits for cash and cigarettes. The employee admitted that the price for cash was double the amount of the cash in FAP benefits. Finally, as part of the investigation, the USDA OIG compared Store's transactions with four other convenience stores within a one mile radius of Store. Between January 2010 and October 2014, Store's average total EBT transactions completed per month was \$12,726.23. The average transactions completed in a given month from the other stores ranged from \$1,754.39 to \$5,254.69. The Department also compared Store's transactions completed in a given month to the average of the four other stores showing that the difference in total EBT transactions ranged from \$4,714.18 in April 2014 to \$16,735.82 in July 2014. Based upon the difference between the total transactions in a given month and the average between all other stores in the same month, the USDA OIG estimated that Store trafficked \$428,826.62 between January 2010 and October 2014. The USDA OIG completed the same process in reviewing the transactions from April and May 2015 when

Store was reopened after a brief period of closure and found similar disparities in the values of transactions completed. After the search warrant was completed, the average transaction value at Store for EBT purchases was reduced to \$2,169.82 as opposed to the average EBT transaction value of more than \$10,000 prior to the search warrant. Based upon the investigation, Store was prosecuted by the United States Attorney's Office for the Eastern District of Michigan.

Although Store trafficked benefits, the Department must show that Respondent participated in the trafficking at Store. The Department believes that Respondent's transactions are indicative of the trafficking seen and discussed during the investigation by USDA OIG. In support of its case, the Department presented Respondent's transaction history from Store as well as his complete EBT transaction history. Respondent had eight transactions at Store flagged for trafficking. Each of the transactions was identified as a trafficked transaction based upon the excessive dollar value and multiple transactions being completed on the same day. During the fraud period, Respondent completed transactions at Store which were flagged for trafficking ranging from \$30.98 to \$188.99. On May 8, 2014, Respondent completed three transactions which were flagged totaling \$153.56. On June 3, 2014, he completed two transactions totaling \$163.98.

A review of Respondent's complete EBT history shows that he shopped at more traditional grocery retailers such as Save-A-Lot Food Store, Kroger, and Gordon Food Service. Despite the opportunity to shop at more traditional grocery retailers with greater selection, quality, and pricing than Store, Respondent completed many transactions at Store with significant values, often more than at the traditional retailers. It is notable that these other grocery retailers offer fresh fruits, vegetables, meat, poultry, and seafood which are not available at Store. Store's inventory is limited to convenience items like chips, candy, crackers, and breakfast bars.

Finally, the Department presented Respondent's Benefit Summary Inquiry showing that for each month of the fraud period, Respondent was issued between \$158.00 per month and \$194.00 per month. Given the size of Respondent's transactions, in May 2014, Respondent spent more than 97% of his FAP benefits at Store leaving him no additional FAP benefit to purchase items such as meat, fruits, and vegetables. In June 2014, he spent more than 86% of his FAP benefit at Store meaning for two months in a row, he had little to no food benefit available for the purchase of meat, vegetables, or fruit.

After reviewing all of the evidence, the Department has met its burden of proof by clear and convincing evidence that Respondent committed an IPV by trafficking FAP benefits at Store.

### **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. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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)(1) and (5). A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This is Respondent's first IPV. Therefore, he is subject to a period of disqualification from the FAP for one year.

### **Recoupment or Collections**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup that amount. BAM 700, p. 1; 7 CFR 273.18(c)(2). The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8; 7 CFR 273.18(c)(2).

As discussed above, the Department presented clear and convincing evidence to support its allegation that Respondent trafficked his FAP benefits at Store. In reviewing his IG-312 EBT History, Respondent completed \$650.91 worth of transactions at Store, which were found to be trafficked FAP benefits as discussed above. Therefore, the Department has met its burden of proof in establishing a claim for trafficked FAP benefits in the amount of \$650.91.

### **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. The Department has established a claim for trafficked FAP benefits in the amount of \$650.91.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$650.91 in accordance with Department policy.

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



AM/cg

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**Amanda M. T. Marler**  
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-Macomb-36-Hearings  
OIG Hearings  
Recoupment  
MOAHR

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

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