



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: March 13, 2020  
MOAHR Docket No.: 19-009514  
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, an in-person hearing was held on February 24, 2020, from Hamtramck, Michigan. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG) and Kyle Bruckner, Assistant Attorney General. Respondent was present with her representative, [REDACTED].

### **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 FAP 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 for a period of 12 months.
3. Respondent was made aware of the responsibility to use FAP benefits for lawful purchases.
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 March 16, 2017 through August 15, 2017. (fraud period).
6. During the fraud period, the Department alleges that Respondent was not entitled to receive \$720.35 in FAP benefits.
7. The Department alleges that it is entitled to recoup/collect FAP benefits in the amount of \$720.35 from Respondent.
8. This was Respondent's first alleged 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.

### **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 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. 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). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring,

receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). 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], Detroit, MI [REDACTED] (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). To support a trafficking case against Respondent, however, the Department must establish by clear and convincing evidence that Respondent engaged in trafficking when she used her 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 a multitude of transactions over \$126 and up to \$201.69. The Department testified that the USDA determined the threshold amount that could reasonably be spent at Store was \$126.99, given Store’s size and inventory. Additionally, Respondent made two high-priced transactions within a short period of time.

The Department testified that the high-priced transactions were not supported by Store’s inventory. The evidence showed that Store was a small store with a limited inventory of FAP eligible food items. Store had a small supply of fresh vegetables and fruit. Store stocked some fish, eggs and deli meat but no other meat products. Store had no baskets, carts or optical scanners. Store also had only one cash register. Store did not have any storage coolers or freezers for additional stock. Additionally, Store had a bulletproof glass barrier that only allowed a limited number of items to be purchased at one time. Store’s size and inventory made Respondent’s high expense FAP purchases unlikely to be legitimate food purchases.

Respondent testified that she and her daughters would frequently shop at Store and purchase items on credit. Respondent stated that she would never purchase more than \$50 worth of groceries at one time. Respondent testified that Store would allow her and her family members to repay previously purchased food items when she received her monthly FAP benefits. Respondent stated that her family would shop at Store between

four to six times per day. Respondent's home was in close proximity to Store and the convenience was the primary reason she spent so much of her FAP benefits at Store.

Respondent stated that her large transactions were a result of purchasing items on credit. However, Respondent did not give a clear explanation as to why she would have two transactions within a short period of time. Respondent stated that she would frequently have insufficient funds to repay what she owed Store for the items she purchased on credit. Respondent testified that at times she would repay Store an amount she thought she could afford but after checking her balance, she would determine that she could expend additional FAP benefits toward the amount due at Store. Respondent would then return to Store to pay additional FAP benefits toward her tab. However, on July 19, 2017, Respondent made two high-priced transactions at Store within 1 minute. Respondent did not have a clear explanation for the unusual transactions. Additionally, Respondent indicated that Store's close proximity was the reason she expended such large sums of her FAP benefits at Store. However, Respondent's entire transaction history shows that she shopped at other markets, such as [REDACTED] and [REDACTED], which were both within a similar proximity to Respondent's home as Store. However, Respondent did not expend such high values at those markets as she did at Store. Respondent did not provide a credible reason as to why she was spending such high values at Store.

It should also be noted that had Respondent been found credible, her admission to utilizing her FAP benefits to pay for previously purchased food items is a violation of SNAP regulations. Federal regulations state that program benefits shall not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. 7 CFR 274.7(b). The federal regulations define an IPV to include any act that constitutes a violation of the SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

A review of Respondent's transactions at Store, in consideration of Store's limited inventory and layout, establishes by clear and convincing evidence that Respondent trafficked at Store. Because the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits, it has established that she committed an IPV in connection with her FAP case.

### **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. 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. 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 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.

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 \$720.35. Therefore, the Department is entitled to recoup and/or collect \$720.35 for trafficked FAP benefits at Store during the fraud period.

### **DECISION AND ORDER**

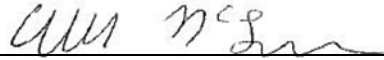
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent trafficked \$720.35 in FAP benefits.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP amount of \$720.35, less any amount already recouped and/or collected.

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

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-55-Hearings  
AG-HEFS-MAHS  
OIG Hearings  
Recoupment  
MOAHR

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



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

