

2. Respondent was a recipient of FAP benefits issued by the Department.
3. Respondent **was** aware of the responsibility not to buy, sell, trade, exchange, or otherwise traffic FAP benefits.
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 June 2015 through April 2017 (fraud period).
6. The Department is seeking to establish a claim for trafficked FAP benefits in the amount of \$534.00.
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). 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 he trafficked \$534.00 of FAP benefits at [REDACTED] (Store), a convenience store. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. 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 (January 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 this case, the Department established that it adequately notified Respondent at the time of Application and when he received the EBT card that he could not traffick FAP benefits.

The Department presented evidence that after an investigation by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), Michigan State Police, and the Michigan Department of Agriculture & Rural Development, Store was found to have unclean and unsafe conditions. Furthermore, Store was not conducive to completing any real grocery purchases because it lacked inventory, baskets, carts, optical scanners, and sufficient counter space to complete transactions due to the plastic barrier between the customer and Store clerk. Pictures from Store also show that of the inventory available, a substantial portion of it was expired or sitting in or near rat feces. Furthermore, during the investigation a live rat was captured in Store. The photos also show that inventory that was not in or near rat feces had dust accumulating on top of it, evidencing a low turnover of any inventory available. It was also noted that many of the shelves in Store were empty. A Michigan State Police report confirms that a sting operation was completed wherein Store purchased \$370.00 in FAP benefits from cooperating witnesses in exchange for cash, cigarettes, alcohol, and other non-FAP eligible items. Given Store’s condition, it could not support large-dollar-value transactions or transactions in quick succession and was likely trafficking benefits on a regular basis. However, to support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when he used his FAP benefits at Store.

Upon review of Respondent’s IG-312 EBT history from Store, Respondent completed back-to-back transactions (transactions in a very short timeframe), and large dollar transaction. On June 4, 2016, Respondent completed six transactions between 3:34 PM and 6:38 PM totaling \$63.81. Notably, three of the transactions were made two minutes apart for exactly \$4.50. The day before this series of transactions, Respondent spent \$80.80 at Meijer, a traditional grocery retailer with better quality, selection, pricing, and cleanliness. Respondent also completed a transaction of \$78.53 on August 3, 2016 at 12:03 PM. Four days before this transaction, Respondent spent \$18.86 at Kroger and then \$27.91 two days after. Again, Kroger is a traditional grocery retailer with greater inventory, quality, pricing, and cleanliness. On April 17, 2017, Respondent completed three transactions on the same day at 4:06 PM for \$23.00, 4:07 PM for

\$4.00, and 8:35 PM for \$4.00. Again, Respondent visited Kroger two days before and the day before this series of transactions but spent only \$5.78. Respondent has other large-dollar transactions for \$79.99, \$64.20, \$63.42, and \$63.99. Respondent's repeats this pattern of transaction history at Store throughout the fraud period. Given Store's lack of baskets, shopping carts, optical scanners, inventory, and limited counter space, these transactions were not legitimate food purchases but instead trafficked benefits. The review of Respondent's FAP transaction history, coupled with the USDA's finding that Store trafficked FAP benefits, was sufficient when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked 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 was Respondent's first IPV. Therefore, he is subject to a one-year disqualification under the FAP.

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).

In this case, the Department alleged that Respondent trafficked \$534.00 in FAP benefits from June 2015 through April 2017. A review of the Respondent's IG-312 EBT History presented by the Department supports FAP trafficking in the amount alleged. The Department is entitled to recoup \$534.00 from Respondent, the amount of trafficked FAP benefits.

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 \$534.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$534.00 in accordance with Department policy.

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



AMTM/jaf

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

DHHS
(via electronic mail)

Jeanette Cowens
MDHHS-[REDACTED]-Hearings
L Bengel
Policy Recoupment

Petitioner
(via electronic mail)

MDHHS-OIG-Hearings

Respondent
(via first class mail)

[REDACTED]
[REDACTED]
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