



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: March 25, 2020  
MOAHR Docket No.: 19-013467  
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 March 4, 2020, from Detroit, Michigan. The Department was represented by Patrick Waldron, 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 an OI of 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 did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. The Department's OIG indicates that the time period it is considering the fraud period is March 11, 2018 through April 18, 2018 (fraud period).
5. During the fraud period, the Department alleges that Respondent trafficked \$683.58 in FAP benefits.
6. The Department alleges that it is entitled to recoup/collect FAP benefits in the amount of \$683.58 from Respondent.
7. This was Respondent's first alleged IPV.
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 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(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 by purchasing food with her deceased mother's FAP benefits. Trafficking is (i) the buying, selling or stealing 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 "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, 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 testified that it received a death match indicating that Respondent's mother, [REDACTED], was deceased. The Department matches recipient data with other public and private agencies through computer data exchanges. BAM 808 (October 2018), p. 1. The State Master Death File is received daily and the Department uses the data from these files to automatically update cases. BAM 808, p. 1. The Department determined that Respondent's mother died on March 5, 2018.

The Department presented Respondent's mother's Electronic Payment Processing and Information Control (EPPIC) summary, showing numerous transactions that occurred using her FAP benefits after her date of death. The EPPIC report also showed that Respondent was an authorized representative on her mother's FAP benefit case. Additionally, the report shows that the card utilized to complete the transactions after Respondent's mother's date of death was assigned to Respondent's mother.

The Department submitted the balance inquiries made on Respondent's mother's FAP benefit account between the period of March 15, 2018 and April 18, 2018. The document shows the phone numbers that made the balance inquiries during that time period. The Department also presented documentation establishing that the phone numbers that completed the balance inquiries belonged to Respondent, Respondent's son and Respondent's sister.

The Department stated that an interview was conducted with Respondent in October 2019. Respondent confirmed that her mother had been deceased. Respondent stated she could not recall if she used her mother's FAP benefits after her date of death. Respondent confirmed that the phone numbers that completed the balance inquiries belonged to her family members.

The Department presented clear and convincing evidence that Respondent was the individual using her mother's FAP benefits. It is evident that Respondent did not have authorization to utilize the FAP benefits from the account holder, nor was she

purchasing food on her behalf, as Respondent's mother was deceased. Respondent's unlawful appropriation of her mother's FAP benefits is evidence that Respondent committed an IPV. Thus, the Department provided clear and convincing evidence that Respondent trafficked FAP benefits and committed an IPV.

### **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; 7 CFR 273.16. 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. 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this is Respondent's first IPV, Respondent is subject to a one-year disqualification from the receipt of FAP benefits.

### **Recoupment/Collection**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. 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.

As discussed above, the Department presented clear and convincing evidence to support its allegation that Respondent trafficked her mother's FAP benefits by unlawfully appropriating the funds. The Department identified all of the transactions that occurred after Respondent's mother's date of death. These transactions total \$683.58. Therefore, the Department is entitled to recoup and/or collect \$683.58 for trafficked FAP benefits at Store during the fraud period.

## **DECISION AND ORDER**

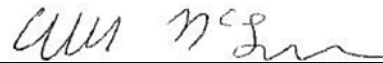
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$683.58 from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI amount of \$683.58, 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.

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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-Wayne-19-Hearings  
OIG Hearings  
Recoupment  
MOAHR

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

