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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 7, 2016
MAHS Docket No.: 15-015639
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 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 May 19, 2016, from Detroit, Michigan. The Department was represented by Erika Morgan, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Ronald Alvin.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
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], 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 was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits and/or aware of the responsibility that authorized representatives (AR) chosen by the Respondent can only access the FAP account.
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 [REDACTED] (fraud period).
7. The Department alleges that Respondent trafficked \$594.04 in FAP benefits.
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 US Post Office 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 or more, or
 - the total amount is less than \$500, 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 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 (May 2014), 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.

The federal Food Stamp regulations read in part:

- (c) *Definition of Intentional Program Violation.* Intentional Program Violation shall consist of having intentionally:
- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

7 CFR 273.16(c)(1) and (2).

Additionally, *trafficking* means:

- (1) 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;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2; see BAM 700, p. 2 (definition of trafficking); and BEM 203 (October 2012), p. 2 (FAP trafficking disqualifications are a result of the following actions: fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or redeeming or presenting for payment coupons known to be fraudulently obtained or transferred).

The Department argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as “Store”), where the Department indicated that the Store was involved in FAP trafficking and as a result, the Store was disqualified;
- Store’s layout and inventory makes it unlikely that someone would make regular and/or large purchases of food; and
- Based on Respondent’s transaction history conducted at the Store, he trafficked his FAP benefits.

First, the Department presented Respondent’s Mid-Certification Contact Notice dated [REDACTED], to show that he acknowledged his responsibility to report changes as required. See Exhibit A, pp. 21-23.

Second, the Department presented a “Store Report,” which summarized the Department’s argument that the Store has been engaged in trafficking activity that is in violation of the United States Department of Agriculture (“USDA”) standards within the FAP program. See Exhibit A, p. 11. Also, the Department presented pictures of the Store, which showed that the Store has purchasable foods and non-purchasable foods. See Exhibit A, pp. 12-16.

Third, to establish that Respondent trafficked his FAP benefits at the Store, the Department relied on Respondent’s FAP transaction history. See Exhibit A, p. 17. For example, on [REDACTED], Respondent made one large purchase for \$83.44. See Exhibit A, p. 17. These large purchases for high dollar amounts repeated throughout the alleged fraud period for a total of six transactions. Exhibit A, p. 17.

Fourth, the Department presented a signed affidavit from Respondent dated [REDACTED] in which he admitted to giving his Electronic Benefits Transfer (EBT) card to a relative because he had a closed head injury but did not know that they misused it. See Exhibit A, p. 24. Respondent further stated that he is willing to pay back the money, but does not want to be disqualified because he needs FAP benefits. See Exhibit A, p. 24. It should be noted that Respondent was the only authorized user for his EBT card.

At the hearing, Respondent testified as to the following: (i) he did not intend to commit a violation of the FAP program; (ii) he suffered a closed head injury and was hospitalized for a month and a half and then resided with his sister for a couple of months; (iii) during that period, he allowed family to use his EBT card to purchase him food, but realized the amount of food he received did not correlate to the amount of FAP benefits being spent; (iv) he did not know that the family members misused his EBT card; and (v) and he did not dispute that he owes the alleged OI of \$594.04.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department's position is that Respondent trafficked his FAP benefits at the Store and/or he allowed an unauthorized user to use EBT card at the Store, which resulted in the alleged trafficking of FAP benefits. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV," including an IPV based on trafficking. BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that he did not intend to commit a violation of the FAP program when he allowed other family members to use his EBT card, which resulted in the alleged trafficking at the Store. Respondent's credibility is supported by the evidence record. The Department presented Respondent's own affidavit in which the statement in the affidavit is consistent with the testimony he provided at the hearing. See Exhibit A, p. 24. As stated previously, Respondent's affidavit indicated that he admits to giving his FAP card to relatives due to a closed head injury, but did not know that the funds were misused. See Exhibit A, p. 24. This undersigned finds that this evidence supports the Respondent's testimony that he did not intend to commit a violation of the FAP program, but instead, did result in the violation of policy by allowing an unauthorized user(s) to use his EBT card. As such, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

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 (April 2014), 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 has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1.

For FAP trafficking, the OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- 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. This can be established through circumstantial evidence.

BAM 720, p. 8

As discussed above, the Department failed to support its allegation that Respondent intentionally committed an IPV by trafficking his FAP benefits. However, Respondent acknowledged that he did allow relatives to use his EBT card and he did not dispute the OI of \$594.04. Even though the undersigned finds Respondent's action unintentional, Respondent cannot allow others to use his FAP benefits and/or EBT card. See BEM 212 (November 2012), p. 1; BAM 401E (December 2011), p. 1; and 7 CFR 274.7(a) (Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits). Thus, the Department is entitled to recoup \$594.04 for the period of [REDACTED] [REDACTED]. See Exhibit A, p. 17; BAM 700, p. 1; and BAM 720, p. 8.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$594.04.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$594.04 in accordance with Department policy.

EF/hw



Eric Feldman

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]