



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 28, 2016
MAHS Docket No.: 15-013406
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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], 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 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.
5. Respondent had no 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 \$623.00 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 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 [REDACTED], 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.

In this case, the Department alleged that Respondent committed an IPV of her FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing and accompanying documents, both were returned by the United States Postal Service. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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.

BAM 700 defines trafficking as:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700, p. 2.

Additionally, BEM 203 states that these 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.

BEM 203 (July 2013), pp. 3-4.

In this case, the Department alleged that Respondent trafficked her FAP benefits because her Bridge Card was used by an unauthorized user during the time she was incarcerated.

First, the Department presented Respondent's online application dated [REDACTED], to show that she acknowledged the rules of the FAP program and her obligations and responsibilities. See Exhibit A, pp. 13-43.

Second, the Department presented evidence that Respondent was incarcerated from [REDACTED]. See Exhibit A, pp. 10-11.

Third, the Department presented Respondent's FAP transaction history. See Exhibit A, p. 12. The FAP transaction history showed that from [REDACTED] Respondent's FAP benefits were used, while she was incarcerated. See Exhibit A, p. 12.

Fourth, the Department's OIG Investigation Report (OIG report) indicated that the OIG agent present for this hearing interviewed Respondent at the Hillsdale County Jail on [REDACTED], in which she stated the following: (i) Respondent stated her sister was the person using her Bridge Card while she was in jail from [REDACTED]; and (ii) she stated she was not aware that her sister had the card until after she was released but did not want her sister to get into any trouble so was willing to accept full responsibility for her having access to and ability to use the card. See Exhibit A, p. 3.

Electronic Benefit Transfer (EBT) allows clients who receive cash (FIP, SDA etc.), and food (FAP) to receive their benefits using debit card technology. BAM 401E (January 2014), p. 1. Benefits are deposited electronically into a cash and/or food account. BAM 401E, p. 1. Clients access their benefits by using their personal identification number (PIN), along with their Bridge card. BAM 401E, p. 1.

The first line of defense in reducing inappropriate use of Bridge Cards is education. BAM 401E, p. 11. DHS provides client and retailer training. BAM 401E, p. 11. The trainings include guidelines for appropriate use of Bridge Cards as well as fraud and abuse information. BAM 401E, p. 11. Clients are also provided with written materials when they become eligible for assistance. BAM 401E, p. 11. DHS Pub-322, How to Use Your Bridge Card, includes the following information about appropriate use:

- Misuse of Food Benefits is a violation of state and federal laws.
- Do not sell, trade or give away Food Assistance benefits, PIN or Michigan Bridge Card.
- Do not allow a retailer to buy food benefits in exchange for cash.
- Do not use someone else's food benefits or Bridge Card for households.
- Clients who purchase any beverages, in any type of container with a deposit, who dump the contents out and return the containers for the deposit, may be disqualified from receiving Food Assistance Program (FAP) benefits.
- People who break Food Assistance Program rules may be disqualified from the program, fined, put in prison, or all three; and must repay the food benefits.

BAM 401E, pp. 11-12.

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits.

First, the evidence established that Respondent's EBT card was used during the time she was incarcerated. Thus, it is highly suspicious how Respondent could conduct

several transactions during the time in which she was incarcerated. In fact, several of the transactions were “swiped,” which meant that the EBT card had to be present during the transactions conducted and that her PIN had been used. See Exhibit A, p. 12. As such, the evidence is persuasive that Respondent trafficked her FAP benefits by allowing someone else to use her food benefits who was not an eligible group member/authorized user at the time she was incarcerated. Respondent trafficked her FAP benefits because she did fraudulently use, transfer, alter, acquire, or possess coupons, authorization cards, or access devices other than authorized by the Food Stamp Act. See BEM 203, pp. 3-4.

Second, Respondent admitted that her sister had access to her card, she did not know that her sister had the card until she was released, and stated she did not want her sister to get into any trouble. See Exhibit A, pp. 3-4. Respondent’s admission to the trafficking is an appropriate consideration in determining whether trafficking occurred. Respondent’s statement was given directly to the testifying agent who credibly testified concerning the statement. Respondent’s statement is not hearsay because it was an admission by party opponent (Michigan Rules of Evidence 801(d)(2)); for good measure, the statement also meets a hearsay exception as a statement against interest by an unavailable declarant (Michigan Rules of Evidence 804 (b)(3)). Furthermore, the Department indicated that the sister was not a member of Respondent’s household and she was not an authorized user on her account. As such, the evidence is persuasive that Respondent trafficked her FAP benefits by allowing someone else to use her food benefits who was not an eligible group member/authorized user at the time she was incarcerated.

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, pp. 15-16; 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 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 concerning FAP benefits. Therefore, Respondent is 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.

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 stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. However, the undersigned calculated the total OI to be \$613.83, rather than \$623 that it was seeking. See Exhibit A, p. 12. As such, the Department is entitled to recoup \$613.83 of benefits Respondent trafficked during the period of [REDACTED]. 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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$613.83.

The Department is **ORDERED** to reduce the OI to \$613.83 for the period [REDACTED], and initiate recoupment procedures in accordance with Department policy.

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

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 [REDACTED]; 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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]