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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

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Date Mailed: September 30, 2016
MAHS Docket No.: 15-026438
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Eric J. 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 September 19, 2016, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by ██████████ (Respondent).

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 December 9, 2015, 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 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 June 1, 2010 to June 30, 2014 (fraud period).
7. The Department alleges that Respondent trafficked ██████████ in FAP benefits.
8. This was Respondent's second 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, 2015, 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 2015), 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 (October 2015), 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, selling or stealing 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.
- Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

BAM 700, p. 2. Moreover, FAP trafficking includes 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 (January 2009), p. 2.

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

- there exists a food store (hereinafter referred to as “Store 1”), where the United States Department of Agriculture (“USDA”) determined that Store 1 was engaged in food trafficking and ultimately led to the Store 1’s permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store 1 was a meat market in which the USDA/OIG determined that FAP benefits were being trafficked (two other Stores owned by the same owners in which alleged trafficking occurred as well, but the alleged trafficking at issue occurred only at Store 1) (See Exhibit A, pp. 3 and 9-37);
- Clients received cash in exchange for SNAP benefits (See Exhibit A, pp. 1, 3, and 9-37);
- Store 1 did not have the food items or the physical means to support high dollar and/or closely related transactions;
- over a period of time, Respondent had high dollar and/or closely related transactions at Store 1, which is consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented evidence that Store 1 engaged in FAP trafficking, which resulted in Store 1’s permanent disqualification from SNAP on February 24, 2015. See Exhibit A, pp. 38-40.

Second, the Department presented as evidence a Search and Seizure Warrant and an Application for a Search Warrant from the United States District Court for the Eastern District of Michigan detailing the alleged trafficking being conducted at Store 1 (as well as the two additional stores). See Exhibit A, pp. 9-37.

Third, the Department argued that Store 1 did not have the food items or the physical means to support high dollar and/or closely related transactions. See Exhibit A, pp. 1, 3, 9-37, and 41-55 (Photos of the store).

Fourth, to argue that Respondent trafficked her FAP benefits at Store 1, the Department relied on Respondent's FAP transaction history. See Exhibit A, pp. 74-77. A review of the transactions found that the Respondent did conduct high dollar transactions and/or closely related transactions. See Exhibit A, pp. 74-74. For example, on February 8, 2011, Respondent made one large purchase for [REDACTED], or another example includes a transaction for [REDACTED] on January 12, 2011. Exhibit A, p. 75.

At the hearing, Respondent testified and/or made the following assertions: (i) she did commit a violation of the FAP program; (ii) in response to the Department allegation that the meat was expired, Respondent testified she did not know it was bad; (iii) the reasons why the transactions were excessive was because she purchased the meat in bulk; (iv) when she did not have FAP benefits available, the store owner would give her the meat bundles in advance; however, she did not know that was in violation of the FAP program, but she claimed during the alleged fraud period, she did not receive any meat in advance; (v) Store 1 had plenty of inventory that allowed her to buy the meat in bulk purchases and that the community she lives in knew this store was a local meat market; (vi) she never received any cash in exchange for her FAP benefits; (vii) she personally knew the store owner and confronted him of the allegation that he committed fraud and the store owner denied any wrongdoing; and (viii) she would go mainly once a month to Store 1 because she lives close by and would purchase her meat bundles for the entire month and/or conduct a multiple transactions throughout the day because she lived nearby.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV involving her FAP benefits.

First, the evidence is reasonable to conclude that Respondent could purchase food product that are intended for consumption at Store 1 based on the submitted photographs. Exhibit A, pp. 41-55. In fact, one photo showed several meat bundles that could be purchased and intended for food consumption. See Exhibit A, p. 51.

Second, the Department's main argument was based on Respondent's FAP transaction history. The Department attempted to show that the transactions were suspicious due to them being of such high dollar amounts and/or closely related transactions. See Exhibit A, pp. 74-77. Respondent conducted transactions as high as [REDACTED] at Store

1. See Exhibit A, p. 75. As such, the Department claimed that Respondent is involved in trafficking. However, the undersigned disagrees. Respondent provided credible testimony that she did not traffick her FAP benefits. Respondent credibly testified that (i) she purchased meat bundles from Store 1; (ii) the store had the inventory for her to make such high dollar transactions; and (iii) she lived nearby Store 1 and would also conduct smaller purchases and this would explain why she sometimes had multiple purchases throughout the day. Respondent's argument is supported by the pictures the Department presented for the evidence record. The undersigned reviewed the photos and discovered multiple food items Respondent could purchase for food consumption, including meat bundles. Exhibit A, pp. 41-55. In fact, one important picture showed what appeared to be the backroom of Store 1, which contained a large inventory of meat bundles. See Exhibit A, p. 51. This photo supports Respondent's claim that she would go to Store 1 and purchase meat bundles from the store, resulting in her conducting such high dollar transactions. A further review of Respondent's FAP transaction history also supports her contention that she would come to Store 1 once-a-month and conduct large transactions or that she came to the store and conducted multiple transactions throughout the day because she lived nearby . Exhibit A, pp. 74-77.

In summary, 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 she did not commit a violation of the FAP program and is supported, as shown above, by the evidence record. As such, the evidence presented does not establish by clear and convincing evidence that Respondent trafficked her 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 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 24-month 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 amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) 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

In this case, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of [REDACTED] for the period of June 1, 2010 to June 30, 2014.


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 not** receive an OI of FAP program benefits in the amount of [REDACTED]

The Department is **ORDERED** to delete the OI and cease any recoupment action.

EF/tm



Eric J. 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

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