



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 22, 2016
MAHS Docket No.: 16-009503
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 October 27, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear at the hearing; and it was held in the 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

Did the Respondent commit an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and thereby receive an Over issuance (OI) that the Department is entitled to recoup/collect?

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 March 23, 2016, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.

3. The Respondent was a recipient of FAP benefits issued by the Department.
4. There is no Assistance Application in evidence. The Department submitted a Bridges screen shot indicating that the Respondent filed an application for assistance on August 1, 2011 and had no filing representative at the time of that application.
5. The evidence does not indicate that the Respondent had an apparent physical or mental impairment that would limit the understanding or ability to fulfill his reporting requirement to report all changes in household circumstances within 10 days to the Department. The Department submitted the Respondent the "How To Use Your Michigan Bridge Card" booklet that the Department asserts was issued at the same time as the Respondent was issued an Electronic Benefit Transfer Card. The booklet provided the Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules. However, the booklet in evidence indicates that it was published June 6, 2014.
6. The Department's OIG indicates that the time period it is considering the OI period is January 12, 2012 to August 31, 2013.
7. The Department alleges that the Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
8. This was the Respondent's first alleged IPV.
9. A notice of hearing was mailed to the 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 January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- 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 (2016), 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 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.

7 CFR 273.16(c), DEFINITION OF INTENTIONAL PROGRAM VIOLATION

Intentional Program Violations shall consist of having intentionally:

- Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- 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(e)(6)

The State agency shall conduct administrative disqualifications hearings for individuals accused of Intentional Program Violation in accordance with the requirements outlined in this section:

* * *

(6) Criteria for determining Intentional Program Violation. The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, **and intended to commit**, Intentional Program Violation as defined in paragraph (c) of this section.

7 CFR 271.2

Trafficking means:

- The buying, selling, stealing or otherwise affecting 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 in signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- 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;
- Purchasing a product with SNAP benefits in exchange for 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

- Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and 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.

In an Intentional Program Violation (IPV) hearing for trafficking, the Department has the burden of presenting clear and convincing evidence. One of the required facts the Department must establish is whether Respondent was made aware of the conditions that constitute fraud/IPV and trafficking and the potential consequences. The Department must also establish an intent to commit an IPV as required by 7 CFR 273.16(c) and 7 CFR 273.16(e)(6). As such, the Department must establish that the Respondent suffered from no impairment which could interfere with the understanding of rights and responsibilities, including understanding what would constitute the proper use of an EBT card. Often times, a person suffering from such an impairment would have an authorized representative who would be in actual possession of the EBT card. That person would be referenced on the assistance application.

There is no assistance application in evidence. When a Respondent signs the affidavit at the end of an application, the Respondent is certifying knowledge of all the rights and responsibilities provided to the Respondent as part of the application packet. Proper use of an EBT card is explained in the rights and responsibilities. A copy of a signed application is direct evidence that a Respondent was made aware of the proper use of an EBT card, understood the proper use of an EBT card and is the actual person in possession of that EBT card. A copy of a "How To Use Your Michigan Bridge Card" booklet published in 2014 does not at all establish that the Respondent was in any way advised of the proper usage of an EBT card in 2011.

The evidence does contain a computer screen shot indicating that the Respondent did apply for benefits on August 1, 2011 and that he did not have a filing representative at that time. As such, there record does not contain a modicum of evidence to indicate that the Respondent acknowledge his rights and responsibilities before the alleged OI period and the subsequently and intentionally trafficked in FAP benefits in light of that understanding.

As such, this Administrative Law Judge concludes that the Department has met its burden of proving that the Respondent trafficked in FAP benefits and did thereby commit his first 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, pp. 15, 16. 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. 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 Administrative Law Judge has concluded that the Respondent has committed a first IPV. As such, the Administrative Law Judge concludes that the appropriate disqualification penalty to be imposed is one year.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department has met its burden of establishing that the Respondent received an OI in the amount of \$ [REDACTED] that the Department is entitled to recoup/collect.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has established by clear and convincing evidence that the Respondent committed an IPV. The Department is **ORDERED** to initiate recoupment/collection procedures and to impose a disqualification period in accordance with departmental policy.



SH/nr

Susanne E. Harris
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]