



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 1, 2016
MAHS Docket No.: 16-006848
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 25, 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) by trafficking in FAP benefits and thereby receive and the 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 February 19, 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. The Department did issue the Respondent a "How To Use Your Michigan Bridge Card" booklet at the same time as the Respondent was issued an Electronic Benefit Transfer Card. The booklet provides notice of the Food Assistance Program rules and consequences for breaking those rules.
5. There is no evidence in the record, such as an Assistance Application, to indicate whether the Respondent had an apparent physical or mental impairment that would limit the understanding of the proper usage of the Respondent's EBT card or whether or not the Respondent might have an Authorized Representative due to such impairment.
6. The Department's OIG indicates that the time period it is considering the OI period is July 13, 2013 to September 21, 2014.
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.

Intentional Program Violation

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.

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.

The Department did include a copy of "How to Use Your Michigan Bridge Card," booklet that accompanies the EBT card, to show the Respondent understood and acknowledged proper use of an EBT card. 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.

Lastly, the Department argues that the Respondent's transactions constitute trafficking because they are above what the USDA has determined is the average transaction for this establishment, which the USDA has determined is \$ [REDACTED]. However, only the transactions at [REDACTED] have been included in the Respondent's EBT history. The evidence does indicate that the Respondent's purchases at the [REDACTED] were higher than what the USDA had determined was the amount of the average purchase. The evidence does not indicate where else, if anywhere, the Respondent shops. Therefore this Administrative Law Judge cannot determine what the Respondent's entire use of the EBT card consists of; ie) where, if anywhere else, the Respondent shops and amounts spent at those establishments. Also, one of the transactions listed is completed for a small dollar amount and yet, there is a large balance remaining on the EBT card with no immediate large purchase after that.

Furthermore, the [REDACTED] does sell many grocery items and though the average transaction is said to be \$ [REDACTED] this Administrative Law Judge concludes that a person could easily spend \$ [REDACTED] at this establishment on eligible food products, considering the inventory listed and depicted in evidence. Lastly, the Regulation Agent could not identify which exact transactions constitute trafficking in the amount of \$ [REDACTED] as the EBT History enumerates all of the Respondent's transactions at the [REDACTED] totaling \$ [REDACTED] yet the alleged OI is only \$ [REDACTED].

As such, this Administrative Law Judge concludes that the Department has not met its burden of proving that the Respondent trafficked in FAP benefits and did thereby not meet its burden of establishing that the Respondent 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, 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 not committed a first IPV. Therefore, the no disqualification period is appropriate.

Overissuance

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

In this case, no IPV was found. The Regulation Agent could not identify which exact transactions constitute trafficking in the amount of \$ [REDACTED] as the EBT History enumerates all of the Respondent's transactions at the [REDACTED] totaling \$ [REDACTED] yet the alleged OI is only \$ [REDACTED]. As such, the Department has not met its burden of establishing that the Respondent, as a result of the IPV, 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 not established by clear and convincing evidence that the Respondent committed an IPV nor that the Respondent received an OI. Therefore, no recoupment/collection action is ordered and no disqualification penalty is imposed.



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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]