



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 30, 2016
MAHS Docket No.: 16-012896
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 November 15, 2016, from Lansing, 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 in accordance with Bridges Administration Manual (BAM) 720 Intentional Program Violation.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED] ?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- (1) On December 10, 2013, Respondent signed the affidavit in an Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
- (2) In November 2014, a USDA-FNS investigation determined that [REDACTED] was trafficking Food Assistance Program (FAP) benefits. The USDA-FNS investigation developed criteria for Electronic Benefit Transfer (EBT) card

transactions at [REDACTED] that indicate trafficking. That criteria includes transactions which: are well above the location's average transaction amount; end in \$.00, \$.50, or \$.99 (which is extremely rare and impossible to do if proper sales were taking place); occur on the same day and/or within minutes of each other; and/or bring the EBT card balance to zero.

- (3) Between March 5, 2014 and May 8, 2014 Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. Respondent's Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card was used for transactions at [REDACTED]. Twenty-six of Respondent's transactions match the criteria for trafficking established by the USDA-FNS investigation. The total of Respondent's trafficking transactions was \$ [REDACTED].
- (4) Respondent was clearly and correctly instructed regarding the proper and allowed use of Food Assistance Program (FAP) benefits and the Electronic Benefit Transfer (EBT) card.
- (5) Respondent had no apparent physical or mental impairment that would have limited his understanding of the program rules.
- (6) This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish that Respondent committed an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits.

Bridges Administration Manual (BAM) 700 Benefit Over-Issuances defines trafficking as follows:

Trafficking is:

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation governs the Department's actions in this case. It provides in relevant part:

DEFINITIONS ALL PROGRAMS

Suspected IPV

Suspected IPV means an over-issuance 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 their reporting responsibilities.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

OVER-ISSUANCE AMOUNT

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.

OIG RESPONSIBILITIES

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as T

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.

INTENTIONAL PROGRAM VIOLATION (IPV) OF TRAFFICKING

The Department has submitted evidence showing that the USDA-FNS determined that [REDACTED] was trafficking Food Assistance Program (FAP) benefits. The determination was based on their analysis of the store's Electronic Benefit Transfer (EBT) card transactions, the inventory and mix of authorized items carried at the store, the location's point of sale capabilities and the transaction records of similar stores in the same geographic area as the store.

The USDA-FNS investigation of [REDACTED] revealed criteria for Electronic Benefit Transfer (EBT) card transactions that indicate trafficking. That criteria includes transactions which: are well above the location's average transaction amount; end in \$.00, \$.50, or \$.99 (which is extremely rare and impossible to do if proper sales were taking place); occur on the same day and/or within minutes of each other; and/or bring the EBT card balance to zero.

The Department alleges that 26 Electronic Benefit Transfer (EBT) card transactions at [REDACTED], made with Respondent's EBT, are trafficking transactions. All 26 of the transactions match the trafficking criteria revealed by the USDA-FNS investigation of [REDACTED].

Respondent was issued the "How To Use Your Michigan Bridge Card" booklet at the same time as being issued an Electronic Benefit Transfer Card. The booklet provided

Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules.

Respondent signed the affidavit in the (Date) Assistance Application (DHS-1171) certifying notice of the conditions that constitute fraud/IPV and trafficking and the potential consequences.

The evidence submitted by the Department constitutes clear and convincing evidence that Respondent committed, and intended to commit, an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED] at [REDACTED].

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.


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, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation by engaging in Food Assistance Program (FAP) trafficking in the amount of \$ [REDACTED] which the Department is entitled to recoup in accordance with Department policies.

This is Respondent's 1st Food Assistance Program (FAP) Intentional Program Violation (IPV) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

It is **ORDERED** that the actions of the Department of Human Services, in this matter, are **UPHELD**.

GH/nr



Gary Heisler
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]