



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 10, 2017
MAHS Docket No.: 16-015013
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on February 8, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. 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 Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

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 September 6, 2016, 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. In 2014, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) conducted an investigation of [REDACTED] (hereafter, "the store"), located at [REDACTED]. [Exh. 1, pp. 35-42, 43-44, 45-48].
4. The store is a small convenience store located within the [REDACTED] bus station. The store maintains an inventory with a limited supply of food items, no shopping parts or baskets and only one cash register. The store carried a small inventory of chips, pop, candy and expired food items, but did not have an inventory sufficient to support larger transactions. [Exh. 1, pp. 35-42, 43-44, 45-48].
5. The USDA-FNS investigation revealed that the store owners and other employees exchanged FAP benefits for cash and other ineligible items, such as cigarettes. The exchange rate was generally [REDACTED] in cash for each \$ [REDACTED] in FAP benefits. [Exh. 1, pp. 35-42, 43-44, 45-48].
6. The USDA-FNS investigation revealed that the store owners and employees would retain an Electronic Benefit Transfer (EBT) card for several days or would record the EBT card number and Personal Identification Number (PIN) in order to conduct a series of smaller transactions to remove the purchase FAP benefits. The store owners/employees made statements that they did this because the store did not have inventory to support large transactions. [Exh. 1, pp. 35-42, 43-44, 45-48].
7. Following the investigation, the USDA-FNS determined that the store was engaged in trafficking of FAP benefits during the months of August, 2009 through September, 2014. [Exh. 1, pp. 35-42, 43-44, 45-48].
8. Following the investigation, the USDA-FNS permanently disqualified the store from participation in the Supplemental Nutrition Assistance Program ("SNAP" also known as "FAP"). [Exh. 1, pp. 35-42, 43-44, 45-48].
9. Respondent was a recipient of FAP benefits issued by the Department. [Exh. 1, pp. 12-19].
10. The OIG contends that Respondent's EBT card was used at the store and that, based on the nature of the transactions, was used fraudulently and in a manner indicative of FAP trafficking.
11. Respondent was provided with documentation containing information about the consequences and/or penalties associated with fraudulent use of the EBT card and/or FAP benefits. [Exh. 1, pp. 49-50].

12. Respondent was provided with documentation that provided instructions regarding the proper use of the EBT card, including the importance of protecting the PIN, which is confidential. Respondent was also clearly instructed that the EBT card was only to be used by Respondent and that she was not permitted to allow third parties to use the EBT card. [Exh. 1, pp. 51-66].
13. Respondent aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food. [Exh. 1, pp. 49-50].
14. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern FAP benefits.
15. The Department's OIG indicates that the time period they are considering the fraud period is April 1, 2013 through January 31, 2014 (fraud period).
16. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
17. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED].
18. This was Respondent's first alleged FAP IPV.
19. 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the 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-.3011.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (5-1-2014) p. 1.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, (10-1-2014) p. 1. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203, (1-1-2015) pp. 2-3. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203, p. 3.

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) 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. BAM 720, p. 8. This can be established through circumstantial evidence. BAM 720, p. 8.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720, p. 16. If the court does not address disqualification in its order, the standard period applies. BAM 720, p. 16.

Clear and Convincing Evidence

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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an IPV. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV because she engaged in multiple high dollar purchases at a store that was found to be engaged in FAP trafficking during the alleged fraud period. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

Based upon the above Findings of Fact, the store was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. This is supported by the United States Department of Agriculture (USDA) investigation report, and related documents, which indicated that the store was engaged in FAP trafficking. [Exh. 1, pp. 35-42]. The USDA also found that the store lacked sufficient eligible food items in its inventory to support high dollar transactions. [Exh. 1, pp. 35-42, 45-48].

Based on the above Findings of Fact, Respondent was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. [Exh. 1, pp. 49-50]. The record also shows that Respondent's EBT card and PIN was used at the store during the fraud period and that the transaction history demonstrated trafficking. [Exh. 1, pp. 20-34]. This was based on the totality of the circumstances, including but not limited to, the size of the store, the amount of inventory carried at the store, and the dollar amount of the transactions. The evidence is clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. The clear and convincing evidence also shows Respondent redeemed or presented for payment coupons known to be fraudulently obtained or transferred. Consequently, the Department OIG Agent has established that Respondent committed an IPV with respect to the FAP program.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the

second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Based on the above Findings of Fact, this Administrative Law Judge finds that the Department has shown that Respondent was guilty of her first IPV concerning FAP benefits. Because the Department has shown that Respondent was guilty of FAP trafficking, the Department has also shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a total \$ [REDACTED] overissuance. This is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

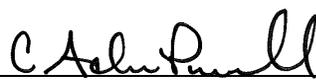
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did commit an IPV due to FAP trafficking.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED that the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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

CAP/mc



C. Adam Purnell
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]