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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



Date Mailed: March 24, 2017
MAHS Docket No.: 16-016272
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], from Detroit, 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 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 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 [REDACTED], 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 to not exchange her Electronic Benefits Transfer (EBT) card for cash or for purchase of items not allowed to be purchased with FAP benefits and that trafficking of FAP benefits is unlawful and a violation of federal regulations and Department policy and could result in 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 [REDACTED], through [REDACTED], (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Respondent signed a sworn statement on [REDACTED], in the presence of a USDA investigator admitting that she sold her FAP to the owner (" [REDACTED] " at a rate of \$ [REDACTED] per \$ [REDACTED] of Food Stamp benefits. The statement by Respondent also admits that she routinely left her EBT card with the [REDACTED] owner and also admitted to purchasing women's clothes, purses and shoes in exchange for FAP benefits. Respondent also believed that the owner used Respondent's EBT card at other stores such as [REDACTED] on [REDACTED] in [REDACTED] Michigan. Exhibit A, pp. 78-80.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. The Petitioner admitted to the Department Regulation Agent that her FAP trafficking amounted to \$ [REDACTED]
11. This was Respondent's **first** alleged IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and **was not** returned by the U.S. 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:

- Willful overpayments of \$500 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 (1/1/16), 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 700 (May 2010), p. 4; 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.

The federal Food Stamp regulations read in part:

- (c) *Definition of Intentional Program Violation.* Intentional Program Violation shall consist of having intentionally:
- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) 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(c)(1) and (2).

Additionally, *trafficking* means:

- (1) The buying, selling, stealing, or otherwise effecting 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 and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

(3) 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;

(4) Purchasing a product with SNAP benefits with the intent of obtaining 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

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect 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 and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2 (emphasis added). See also BAM 720. (October 2015), 7-8.

This matter arises due to alleged trafficking by Respondent at [REDACTED] located in [REDACTED] Michigan. This convenience store was located at the bus depot in [REDACTED] Michigan. [REDACTED] was terminated and permanently disqualified from the SNAP program after an extensive investigation by the USDA. On [REDACTED], the USDA revoked the store's eligibility for participation in the SNAP program. The Department presented evidence, which included a summary of a USDA letter to the store owner with detailed evidence of transactions conducted undercover by USDA in

the course of its investigation, which established that SNAP benefits were exchanged for cash, at an exchange of fifty cents on the dollar, EBT cards were used to pay for clothes and purses, and FAP recipient EBT cards were used by the convenience store owners in other stores. In addition, some of the transactions were as large as \$ [REDACTED] in a small convenience store. Exhibit A, p 32. The evidence also demonstrated that the average completed amount for the store ranged from \$ [REDACTED] to \$ [REDACTED] Exhibit A, p. 38. The pictures of the store showed that it was a small store with very little food except sandwiches, one aisle and mostly chips, drinks and water for sale. Exhibit A.

In this case, the Respondent admitted to trafficking at the [REDACTED] during the period in question and signed a sworn statement to that effect. The Department also presented the Petitioner's EBT purchase history at the [REDACTED] and other transactions based upon a discussion with the Respondent with respect to the use of Respondent's card by the owner at certain stores including [REDACTED] on [REDACTED] and [REDACTED] which she described as stores where she never shopped. Finally, the Respondent admitted she trafficked \$ [REDACTED] during the period in question. To substantiate this discussion and the trafficked benefit amount, the entire EBT transaction history was reviewed by the Department and marked up as to those transactions which fit the profile described by Respondent. See Exhibit A, pp. 54-56 and 58. Based upon these admissions to the Regulation Agent Investigator, corroborated by the signed statement made by Respondent, it is determined that the Department has demonstrated by the evidence presented that Respondent trafficked her FAP benefits. See Exhibit A, pp. 41-76.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based upon trafficking of her FAP benefits at the [REDACTED] Shop.

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 an 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. 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 Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits by trafficking. This is Respondent's first IPV. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1.

In this case, the Department established that the Respondent trafficked \$ [REDACTED] of her FAP benefits during the period [REDACTED], through [REDACTED]. Department policy provides:

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, (January 1, 2016), p. 8.

It must be noted that the Department's review of the EBT transaction history demonstrated that there were purchases made at stores where the Respondent advised that she never shopped which she described as being made by the owner of the [REDACTED] who used the Respondent's EBT card which Respondent left with the owner. The purchases fitting this pattern as well as large dollar purchases at [REDACTED] totaled more than \$ [REDACTED] and are also supported by Respondent's sworn statement. Exhibit A, p. 76. In addition, the undersigned found the testimony of the Department OIG Regulation Agent in this matter to be credible.

Based upon the evidence presented and a review of the Respondent's use of his EBT card at the [REDACTED] it is determined that the Department has established a \$ [REDACTED] OI of FAP benefits for [REDACTED] through [REDACTED] due to the trafficking of FAP benefits.

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:

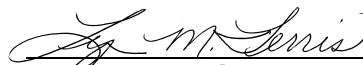
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) food assistance

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of **12 months**.

LMF/jaf



Lynn M. Ferris
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]

[REDACTED]