



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: March 10, 2017
MAHS Docket No.: 16-017371
Agency No.: ██████████
Petitioner: ██████
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 three-way telephone hearing was held on February 13, 2017, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Also, OIG agent ██████████ was present for the hearing, but did not provide any testimony. Respondent was present for the hearing and represented himself.

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 November 10, 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. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
5. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2015 to October 31, 2015 (fraud period).
6. The Department alleges that Respondent trafficked ██████████ in FAP benefits.
7. This was Respondent's first alleged IPV.
8. 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 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 \$500.00 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 (January 2016), pp. 12-13; ASM 165 (August 2016), pp. 1-2.

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 (October 2016), p. 7; 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.

BAM 700 defines trafficking as:

- 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.

BAM 700, p. 2. Moreover, FAP trafficking includes fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (January 2015), p. 3.

Title 7 of CFR 274.7(a), eligible food, states:

Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

Additionally, a person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (July 2014), p. 1.

In this case, the evidence indicated Respondent's FAP group size was one during the alleged fraud period and there were no other authorized users, which meant Respondent was the only eligible group member to use his Electronic Benefit Transfer (EBT) card. However, the Department alleged that Respondent's FAP transaction history showed usage during the time he was incarcerated. As such, the Department argued that Respondent trafficked his FAP benefits because she did fraudulently use, transfer, alter, acquire, or possess coupons, authorization cards, or access devices other than authorized by the Food Stamp Act. See BEM 203, p. 3 and Exhibit A, p. 1.

First, the Department presented evidence that Respondent was incarcerated from April 14, 2015 to December 2, 2015. Exhibit A, p. 12.

Second, the Department presented Respondent's FAP transaction history. Exhibit A, p. 15. The FAP transaction history showed that Respondent's FAP benefits were used during the time he was incarcerated. See Exhibit A, p. 15.

Third, the Department presented a document called the Electronic Payment Processing and Information Control (EPPIC), which shows Respondent's EBT card history. Exhibit A, p. 16 and see BAM 401E (July 2014), pp. 14.-18 The EPPIC document show whether Respondent's card was ever reported lost/stolen or if a new pin number had been activated. See Exhibit A, p. 16. During the alleged fraud, Respondent's EBT card ending in -2256, was the card that was used during his incarceration period. Exhibit A, p. 15. The EPPIC document shows that this card was issued on December 4, 2014 and was reported lost as of October 30, 2015. Exhibit A, p. 16. A new card ending in -6310 was thereafter issued on October 30, 2015. Exhibit A, p. 16. The undersigned Administrative Law Judge (ALJ) has to notate that Respondent has a history of reporting lost/stolen cards. See Exhibit A, p. 16. Also, Respondent's card ending in -2256 was reported stolen while he was incarcerated on October 30, 2015 because he was not released until December 2, 2015.

Fourth, the OIG Investigation Report (OIG report) indicated that the agent spoke to Respondent by telephone on October 24, 2016, in which he reported the following: (i) he did not make the purchases with his EBT card during the time he was in jail or in the hospital; (ii) his EBT card and his personal identification number (PIN) for the card were stolen from his wallet that was in his home by his ex-wife; (iii) his ex-wife did not live at the home where his wallet was stolen from; and (iv) he did not give her permission to use the card. Exhibit A, p. 4.

At the hearing, Respondent argued and/or asserted the following: (i) he did not commit a violation of the FAP program; (ii) he said he was not incarcerated during the time period, instead he was placed in a hospital for a mental illness from April 2015 to May 2016; (iii) he only went to jail if he had a court proceeding and was transported to the jail for any such proceedings; (iv) he also presented documents, which were difficult to read, but showed that there was a Petition/Application for Hospitalization and he provided a Clinical Certificate from the court showing that he was examined on [REDACTED] (Exhibit 1, pp. 1-3); (v) while he was hospitalized, he left his EBT card, including credit cards/pins in his wallet and he believed his ex-wife took his cards and believed she was the one who conducted the EBT transactions; and (vi) he stated his ex-wife also opened his mail, which included his PIN in the mail, but when questioned by the agent that his EBT PIN's are not mailed, he indicated that he was referencing his credit card PIN's were taken in the mail and that she most likely figured out his PIN to access his EBT card.

It should be noted that Respondent included his court documents as an Exhibit. Exhibit 1, pp. 1-3. Moreover, Respondent claimed he also filed a police report claiming his credit cards were stolen and it was included as part of his Exhibits. However, the documents the undersigned ALJ received were extremely difficult to read and the undersigned ALJ could not identify any police report as part of the Exhibits, but only the court documents. Exhibit 1, pp. 1-4.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. The Department's position is that Respondent committed an IPV of his FAP benefits because he trafficked his benefits by allowing someone to use his EBT card while he was incarcerated. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV," including an IPV based on trafficking. BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that he did not traffick his benefits. The undersigned ALJ finds Respondent's argument persuasive that another individual conducted the transactions without his knowledge. Respondent's credibility is supported by the court documents he presented showing that a hospitalization did occur and he was examined on [REDACTED] Exhibit 1, pp. 1-4. These document's bolster Respondent's claim that he did not traffick his benefits by allowing someone to use his EBT card while he was incarcerated/hospitalized. As such, the evidence presented does not establish by clear and convincing evidence that Respondent trafficked his FAP benefits.

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, p. 15; BEM 708 (October 2016), p. 1. 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. 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. BEM 708, p. 1. 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. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

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

For FAP trafficking, the amount for trafficking-related IPV's 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, p. 8

In this case, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of [REDACTED] for the period of April 1, 2015 to October 31, 2015.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of [REDACTED]

The Department is **ORDERED** to delete the OI and cease any recoupment action.

EF/tm



Eric J. Feldman

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]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]