



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: April 10, 2017
MAHS Docket No.: 16-014581
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on March 14, 2017, 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 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 the Respondent committed 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 August 30, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2013, through January 31, 2015. Exhibit A, pp 11-14.
4. On August 30, 2016, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
5. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (January 1, 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.

Overissuance

Evidence that the client had prior knowledge of these requirements is unnecessary to establish an Intentional Program Violation (IPV) for trafficking. IPV is automatically suspected for a client who is alleged to have trafficked FAP benefits. 7 CFR 273.16, BAM 720.

Respondent was a FAP recipient from May 1, 2013, through January 31, 2015. During this period, Respondent made numerous transactions using her FAP benefits at a business known to engage in FAP trafficking. Respondent's purchases at this business using FAP benefits totaled \$ [REDACTED] with an average transaction amount of \$ [REDACTED]

A USDA investigation of this business revealed that this business carried an inventory of more than 20 units of fruit or vegetable juice, beans, peppers, tomatoes, soup, infant formula, bread, cakes, breakfast cereals, flour, snacks, canned meat, and fish. This inventory was conducted on November 4, 2014, which was during the period of

suspected fraud, and no evidence was presented on the record that this inventory was not representative of the business's average inventory during the entire period of suspected fraud.

From June 23, 2013, through June 27, 2013, Respondent made 11 purchases using her FAP benefits totaling \$ [REDACTED]. The average transaction made by Respondent during this period was \$ [REDACTED]. No evidence was presented to establish the amount of the average FAP benefits transaction at this business. This Administrative Law Judge finds that the record evidence does not establish FAP trafficking during this period and it is possible that purchases for these amounts could have been made from the known inventory of this business. While multiple transactions in a single day may be suspicious, this is not clear and convincing evidence of FAP trafficking.

From September 17, 2013, through September 18, 2013, Respondent made 10 purchases using her FAP benefits totaling \$ [REDACTED]. The average transaction made by Respondent during this period was \$ [REDACTED]. This Administrative Law Judge finds that the record evidence does not establish FAP trafficking during this period and it is possible that purchases for these amounts could have been made from the known inventory of this business. While multiple transactions in a single day may be suspicious, this is not clear and convincing evidence of FAP trafficking.

On December 14, 2013, Respondent made a single transaction purchase for \$ [REDACTED]. On June 11, 2014, Respondent made 2 purchases using her FAP benefits totaling \$ [REDACTED]. On July 12, 2014, Respondent made 2 purchases using her FAP benefits totaling \$ [REDACTED]. On September 17, 2014, Respondent made a single purchase for \$ [REDACTED]. On October 14, 2014, Respondent made a single purchase for \$ [REDACTED]. The average of these purchases is \$ [REDACTED]. While there was no evidence to compare these purchases with the average transaction involving FAP benefits at that business, the evidence does support a finding that these transactions were inconsistent with the known inventory and the point-of-purchase equipment observed at that business.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (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.*

This Administrative Law Judge finds that the Department established by clear and convincing evidence that the Respondent intentionally used Food Assistance Program (FAP) benefits in a manner other than authorized by the Food and Nutrition Act of 2008,

as amended, 7 USC 2011 to 2036a, and that fits the Department's definition of benefit trafficking in Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 1-22. This Administrative Law Judge finds that the record evidence does not establish FAP trafficking occurred for all the transactions alleged or for all of the transactions listed in the Department's investigation summary. The Department has failed to present clear and convincing evidence of FAP trafficking involving fraud totaling \$ [REDACTED]. This Administrative Law Judge finds that the Department presented clear and convincing evidence of fraud in transactions totaling \$ [REDACTED].

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 Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED].
3. The Department is ORDERED to reduce the OI to \$ [REDACTED] for the period May 1, 2013, through January 31, 2015, and initiate recoupment procedures in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/nr



Kevin Scully
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]