



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 10, 2017
MAHS Docket No.: 16-009630
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 ██████████, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared for the hearing and represented herself.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 ██████████, 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. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
5. During the fraud period, the Department alleges that Respondent trafficked \$ [REDACTED] in FAP benefits.
6. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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 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 (January 2016), pp.5-7, 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 (October 2016), pp.7-8; 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.

In this case, the Department alleges that Respondent committed an IPV because she trafficked her FAP benefits at [REDACTED] (Store). Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (December 2011), p. 1; see also Department of Health and Human Services, Bridges Policy Glossary (BPG) (October 2012), p. 45. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization

cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (October 2012), p. 3. The federal regulations define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2. Although the Department testified that it notified Respondent at the time of application and when she received the Bridge card onto which her FAP benefits were transferred via EBT that she could not traffick her FAP benefits and that she could lose FAP benefits if she made ineligible purchases, the Department did not present any FAP application for review at the hearing.

While, the Department testified that Store had been investigated by the United States Department of Agriculture (USDA) for trafficking FAP benefits, there was no evidence that the USDA investigation had concluded with the Store having its authorization to accept FAP benefits permanently revoked. Therefore, there is no substantial evidence establishing that Store was an establishment that engaged in trafficking. Nevertheless, the Department contends that Respondent engaged in trafficking at Store. To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when she used her FAP benefits at Store.

The OIG agent argued that Store was a convenience store offering limited selection of food items and no fresh meat and had no grocery carts or hand baskets and relied on the photographs of the establishment to support its testimony. However, the Department was unable to establish when the photographs were taken and that the status of Store during the fraud period was as depicted in the photographs. Further, there was no evidence, other than the OIG’s testimony of an investigation conducted by the USDA, concerning the carts and baskets available at Store during the fraud period. Similarly, the statistical benchmark data presented showed the average FAP expenditures at Store concerned periods in [REDACTED] and [REDACTED], covered only a portion of the fraud period. (Exhibit A, pp. 14-15). Thus, there is limited evidence concerning the average, legitimate purchases that could be expected at Store during the remainder of the fraud period.

In support of its contention that Respondent trafficked her FAP benefits, the Department presented (i) a FAP transaction history for Respondent showing her FAP purchases at Store by date, time, and amount (Exhibit A, pp. 1-19); (ii) photographs of Store taken by the USDA (Exhibit A, pp. 10-13); (iii) a statistical analysis of Store’s transactions prepared by OIG based on data obtained from the USDA concerning Store’s FAP transactions showing the minimum, maximum, and average transactions at Store between [REDACTED] and [REDACTED] (Exhibit A, pp. 14-15); and (iv) a Benefit Issuance Summary showing that Respondent received FAP benefits during the fraud period (Exhibit A, pp. 21-22).

The Department asserted that Respondent’s FAP transaction history shows that she made several large purchases in excess of \$ [REDACTED] indicative of trafficking. At the hearing, Respondent disputed the Department’s position that the Store lacked eligible food items

and stated that the photographs presented are not accurate. Respondent testified that she purchased canned goods such as soup, salmon, and tuna, and that the items were more expensive than other places. Respondent testified that the Store had produce, breads and dairy that she purchased as well. While some of Respondent's transactions may be higher dollar, this evidence on its own fails to raise to the level of providing clear and convincing evidence that they involved trafficking.

Additionally, 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." 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Respondent testified that she had mental difficulties, has problems with her memory, and that she sees things and hears voices. Respondent's presentation at the hearing created doubt as to her ability to fully understand her responsibilities with respect to her FAP benefits and the hearing itself. Based on this behavior, it is found that Respondent lacked the mental capacity to understand the responsibilities involved with receiving FAP benefits.

Therefore, under the facts presented and based on the totality of the record in this case, the Department has failed to establish, by clear and convincing evidence, that Respondent trafficked her 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. Clients are disqualified for ten years for an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV concerning the FAP. Therefore, Respondent is **not** subject to a one-year disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) 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, which can be established through circumstantial evidence. BAM 720, p. 8.

As discussed above, the Department failed to present clear and convincing evidence to support its allegation that Respondent trafficked at Store. Therefore, the Department failed to establish that \$██████ in FAP transactions at Store involved trafficking and is not entitled to recoup or collect that amount from Respondent.

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 FAP program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the \$ [REDACTED] FAP OI, cease any recoupment and/or collection action, and supplement Respondent for any recouped and/or collected amounts.



ZB/jaf

Zainab A. Baydoun
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]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
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