



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 30, 2017
MAHS Docket No.: 16-010824
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 allow others to use your FAP benefits or allow others to know your pin number and use your Electronic Benefits Transfer (EBT) card. Respondent was also 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. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Although the Respondent reported on his application that he had mental problems, he was not receiving State Disability Assistance (SDA) or Supplemental Security Income (SSI) and was not receiving treatment and reported he had a GED.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
7. During the period, Respondent was issued FAP benefits ([REDACTED]), the Respondent trafficked his benefits. Respondent was issued \$[REDACTED] during the fraud period 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 Department alleges that Respondent trafficked \$[REDACTED] in FAP benefits and also received an FAP OI benefits in the amount of \$[REDACTED]
9. This was Respondent's **first** alleged IPV.
10. 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 (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 (October 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.

In this case, there were several incidents where the Respondent's card was in the possession of another. In the incident giving rise to the instant case, the Respondent's card was swiped at [REDACTED] for almost the entire amount on his EBT card in one transaction even though the Respondent when he applied for FAP benefits was homeless and a group of one member. The Department presented the actual items purchased and were food that would be purchased for more than one individual, and more than one individual could use at one time suggestive that the food was purchased by another for a family. The transaction was made by an African American woman who was not Respondent, who was caught on tape using the Respondent's EBT card. [Exhibit A, pp. 55-58.] The Department presented the Respondent's EBT purchases for the date in question, which showed all the FAP benefits, except \$ [REDACTED] were used in one transaction. [Exhibit A, p. 46.] The FAP transaction history shows this usage pattern for several months.

7CFR 271.2

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.

Electronic Benefit Transfer (EBT) allows clients who receive cash (FIP, SDA, etc.), and food (FAP) to receive their benefits using debit card technology. BAM 401E (July 2014), p. 1. Benefits are deposited electronically into a cash and/or food account. BAM 401E, p. 1. Clients access their benefits by using their personal identification number (PIN), along with their Bridge Card. BAM 401E, p. 1.

The first line of defense in reducing inappropriate use of Bridge Cards is education. BAM 401E, p. 12. DHHS provides client and retailer training. BAM 401E, p. 12. The trainings include guidelines for appropriate use of Bridge Cards, as well as, fraud and abuse information. BAM 401E, p. 12. Clients are also provided with written materials when they become eligible for assistance. BAM 401E, p. 13. DHS Pub-322, How to Use Your Bridge Card, includes the following information about appropriate use:

- Misuse of Food Benefits is a violation of state and federal laws.
- Do not sell, trade or give away Food Assistance benefits, PIN or Michigan Bridge Card.
- Do not allow a retailer to buy food benefits in exchange for cash.
- Do not use someone else's food benefits or Bridge Card for households.

- It is prohibited to use cash assistance to purchase lottery tickets, alcohol, or tobacco. Cash assistance grants cannot be used for gambling, illegal activities, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, or cruise ships.
- Clients who purchase any beverages, in any type of container with a deposit, who dump the contents out and return the containers for the deposit, may be disqualified from receiving Food Assistance Program (FAP) benefits.
- People who break Food Assistance Program rules may be disqualified from the program, fined, put in prison, or all three; and must repay the food benefits.

BAM 401E, p. 13.

Based on the foregoing information, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits. As stated previously, the evidence indicated that Respondent's FAP group size was one; and there were no authorized users on his account, which meant that the Respondent was the only eligible group member authorized to use his EBT card. Moreover, the evidence established that Respondent's EBT card was used during a transaction on [REDACTED] by someone other than Respondent. Thus, it is highly suspicious how Respondent could conduct transactions during the time in which he was not using the card for purchases. In fact, the transaction was "swiped," which meant that the EBT card had to be present during the transactions conducted and that his PIN had been used. See Exhibit A, pp. 46, and BAM 401E, p. 5, (Personal Identification Number (PIN)). As such, the evidence is persuasive that Respondent trafficked his FAP benefits by allowing someone else to use his food benefits who was not an eligible group member/authorized user. There also was no evidence that the card was reported lost or stolen. Respondent trafficked his FAP benefits because he 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.

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 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. 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. 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.

For FAP trafficking, 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, p. 8.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving his FAP benefits. Thus, it is found that Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program. See Exhibit A, p. 46, and see BAM 720, p. 8.

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

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