



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]
[REDACTED]

Date Mailed: June 9, 2017
MAHS Docket No.: 16-016613
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 22, 2017, 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 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 October 19, 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. The Department advised Respondent of the responsibility to report changes in circumstances to the Department and to not sell, trade, or give away FAP benefits.
5. The Department was not aware of Respondent having an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period is June 18, 2015 to November 24, 2015 (fraud period A) and March 29, 2016 to November 1, 2016 (fraud period B).
7. The Department alleges that Respondent trafficked [REDACTED] benefits during the fraud period, the sum of [REDACTED] during fraud period A and [REDACTED] during fraud period B.
8. The Department alleges that Respondent received an OI in FAP 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 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 October 1, 2014, 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), p. 5.

An IPV hearing had been previously scheduled in the above-referenced matter. However, after evidence at the hearing indicated that Respondent, who was incarcerated, wished to participate in the hearing, the hearing was adjourned. An Order Granting Adjournment issued April 13, 2017 adjourned the hearing and notified Respondent that he was responsible for providing a telephone number at which he could be contacted if he wished to participate in the rescheduled hearing. Respondent did not contact the Department or the Michigan Administrative Hearing System (MAHS) to provide a contact number or to make any other arrangements for his participation in the rescheduled hearing. Accordingly, the hearing proceeded in his absence.

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 his reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits his or his 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.

In this case, the Department alleges that Respondent committed an IPV by trafficking his FAP benefits when he allowed someone to use his FAP benefits while he was incarcerated. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits; and (iv) attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food. BAM 700, p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2015), p 66. 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 2015), 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.

In support of its contention that Respondent committed an IPV, the Department presented (i) a printout of an “incarceration verification” email initiated by the OIG agent; (ii) an October 19, 2016 printout of Respondent’s biographical information from the () showing current status “prisoner” and image date of March 29, 2016; (iii) a transaction history showing that Respondent’s FAP benefits were used between July 13, 2015 and September 27, 2015 and between April 1, 2016 and October 17, 2016 (Exhibit A, pp. 12-14, 17-20); and (iv) a benefit summary inquiry showing that Respondent was issued monthly FAP benefits during fraud period A (Exhibit A, p. 25).

The Department testified that Respondent was the sole member of his FAP group and he had no authorized representative. Accordingly, he was the only individual eligible to use his FAP benefits, and they were required to be used for his benefit. The OIG agent contended that Respondent trafficked his FAP benefits by allowing someone to access and use his FAP benefits while he was incarcerated between June 18, 2015 and November 24, 2015 and then again from March 29, 2016 to October 29, 2016.

To establish the dates of incarceration, the OIG agent presented an email he sent "[REDACTED]" who he asserted was a [REDACTED] employee and record keeper for the [REDACTED]. The email sent by the OIG agent asks for information for certain clients on an attached sheet that is not included. The agent testified that based on [REDACTED]. [REDACTED] responses, he provided the "incarceration verification" listed at the top of the email indicating that Respondent was booked [REDACTED] and released [REDACTED]. Because there was no clear identification of [REDACTED] title or authority to provide information concerning Respondent's incarceration and no documentary evidence of the information she provided, the information the Department has presented is insufficient to establish by clear and convincing evidence that Respondent was incarcerated from [REDACTED].

To establish the second incarceration period from [REDACTED], the Department relies on the [REDACTED] printout showing an "image date" of March 29, 2016 and a current status of "prisoner." This evidence establishes that Respondent was incarcerated as of the [REDACTED] date the printout was printed. However, the "image date," presumably the date Respondent's photograph was taken, is insufficient to establish the start date of incarceration. Therefore, the information the Department has presented is insufficient to establish by clear and convincing evidence that Respondent was incarcerated from [REDACTED].

Because the Department has failed to establish Respondent's incarceration dates by clear and convincing evidence, the Department has failed to establish that someone other than Respondent accessed Respondent's FAP benefits during the fraud period. Thus, the Department cannot establish that Respondent trafficked his FAP benefits and, in doing so, committed an IPV of 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. Clients are disqualified for ten years for a 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. Therefore, Respondent is **not** subject to a disqualification from receipt of FAP benefits on the basis of IPV.

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. 7.

In this case, the Department alleged that Respondent trafficked [REDACTED] benefits because he allowed another to use his FAP benefits during the fraud period. However, as discussed above, the Department has failed to establish that Respondent was incarcerated during the fraud period and, during such time, trafficked his FAP benefits. Therefore, the Department cannot establish a FAP OI on the basis of trafficking and is not entitled to recoup and/or collect [REDACTED] from Respondent for the alleged overissued FAP benefits during the fraud period.

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] from the FAP program for the period July 30, 2016 to August 30, 2016.

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

AE/tm



Alice C. Elkin
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]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC: [REDACTED]
[REDACTED]