



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: June 30, 2017
MAHS Docket No.: 17-001743
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 792.10111 and R 792.11003. After due notice, a telephone hearing was held on June 1, 2017, from Detroit, Michigan. The Department was represented by ██████████ ██████████, 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) and Mich Admin Code, R 792.10134.

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 January 31, 2017, 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 FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to use FAP benefits for lawful purchases.
5. Respondent did not have 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 (fraud period) is February 1, 2013 to June 30, 2015.
7. The Department alleges that during the fraud period Respondent trafficked ██████████ in FAP benefits issued by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████████.
9. This was Respondent's first alleged FAP 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.

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 (January 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.

In this case, the Department alleges that Respondent committed an IPV because he trafficked his FAP benefits at [REDACTED]

(Store). Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (May 2014), p. 2; see also Department of Health and Human Services, Bridges Policy Glossary (BPG) (July 2014), 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 (July 2014 and January 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.

Although the Department contended that Store was found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had its authorization to accept FAP benefits permanently revoked, a review of the October 23, 2015 letter sent by the USDA to Store advises it that it was being charged with trafficking and a permanent disqualification could follow after Store was given the opportunity to respond. Therefore, the evidence established that Store was charged with trafficking but had not yet had its authorization to accept FAP benefits permanently revoked. To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when he used his FAP benefits at Store and in consideration that, while Store was charged with trafficking, it was not an established trafficking establishment.

In support of its contention that Respondent trafficked his FAP benefits, the Department presented (i) a FAP transaction history for Respondent showing his FAP purchases at Store by date, time, and amount; (ii) a benefit issuance summary showing that he received FAP benefits during the fraud period; (iii) photographs of Store taken by the USDA in September 2015; (iv) a benchmark summary of showing monthly average, minimum and maximum FAP transactions at Store between February 2013 and November 2015; and (v) a depiction of Store’s layout. The Department argued that any transaction over \$12, even dollar transactions, and back-to-back transactions involved trafficking. The Department relied on the benchmark analysis to establish the [REDACTED] threshold for average daily purchases at Store and argued that Store was a convenience store with limited inventory and limited checkout space to support large purchases, pointing to photographs of Store’s inventory and layout. Consequently, it highlighted multiple FAP transactions on Respondent’s transaction history at Store in excess of [REDACTED], with five over [REDACTED] one being for [REDACTED] and one being for [REDACTED]. It is noted that Respondent had multiple transactions on April 10, 2014 and on October 8, 2014, with single day transactions totaling [REDACTED], respectively. He had two transactions on November 7, 2014 within one minute, each for exactly [REDACTED], and an additional two transactions that day bringing his total FAP purchases to [REDACTED] for the day.

Based on a review of the evidence, particularly Respondent's purchases at Store resulting in single purchases, or total purchases in a single day, in excess of [REDACTED] and evidence of Store's inventory and layout, it is found that Respondent's FAP purchases at Store are of such a nature to support, by clear and convincing evidence, that Respondent trafficked at Store. Because the Department has established by clear and convincing evidence that Respondent trafficked his FAP benefits, it has established that he committed an IPV in connection with his FAP case.

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 established by clear and convincing evidence that Respondent committed an IPV concerning FAP. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from his 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 presented clear and convincing evidence, through its testimony and Respondent's transaction history, to support its allegation that Respondent trafficked at Store. The Department identified as trafficked transactions on the transaction history at Store those transactions that were in excess of the norm for a convenience store or that involved multiple same-day transactions. The transactions identified by the Department total [REDACTED]. Therefore, the Department is entitled to recoup and/or collect [REDACTED] for trafficked FAP benefits at Store from February 1, 2013 to June 30, 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** established by clear and convincing evidence that Respondent committed an IPV by trafficking FAP benefits at Store.
2. Respondent **did** receive a FAP OI in the amount of [REDACTED]

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI amount of [REDACTED], less any amount already recouped and/or collected, for the period February 1, 2013 to June 30, 2015.

It is FURTHER ORDERED that the Department personally disqualify Respondent from FAP for a period of **12 months**.



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]

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[REDACTED]

CC: [REDACTED]
[REDACTED]