



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: July 25, 2017
MAHS Docket No.: 17-005559
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Health and Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on July 18, 2017, from Lansing, Michigan. [REDACTED] Agent with the Office of Inspector General (OIG) appeared on behalf of the Department. 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 commit an Intentional Program Violation (IPV) concerning Food Assistance Program (FAP) benefits?
2. Did Respondent receive an overissuance (OI) of FAP benefits?
3. Should Respondent be disqualified from receiving 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 April 5, 2017, to establish that Respondent had allegedly committed an IPV.
2. The Department's OIG alleges that Respondent is guilty of an IPV concerning FAP benefits when he purchased soda with the express intent of emptying the contents to obtain a refund. [Exhibit 1, p. 4].

3. The OIG has requested that Respondent be disqualified from receiving FAP benefits.
4. Respondent applied for and received FAP benefits issued by the Department. [Exh. 1, p. 17].
5. Respondent was aware that it was unlawful to purchase containers with deposits, dumping or discarding the product(s) and then return the containers to obtain a cash refund deposit. [Exh. 1, pp. 5,7, & 8].
6. On August 17, 2016, Respondent, using a Michigan-issued Electronic Benefit Transfer (EBT) or Bridge card, purchased soda pop from [REDACTED] [REDACTED] Michigan, emptied the contents of the soda containers and returned the empty containers to the store for a refund. [Exh. 1, pp. 18-20].
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern the lawful use of FAP benefits.
8. Respondent engaged in a transaction that involved FAP benefits. [Exh. 1, pp. 18-20, 21-22]. The amount of the transaction was \$ [REDACTED] [Exh. 1, pp. 21-22].
9. On February 22, 2017, Respondent signed an Intentional Program Violation (IPV) Repayment Agreement, where he agreed to repay \$ [REDACTED] FAP OI. [Exh. 1, p. 23].
10. Respondent admitted that he received an OI in FAP benefits and sent the Department a money order in the amount of \$ [REDACTED] [Exh. 1, p. 15].
11. Respondent contends that the fraud period is August 1, 2016, through August 30, 2016.
12. This was Respondent's first alleged FAP IPV.
13. 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the 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-.3011.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) (10-1-2015), p. 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (10-1-2016) p. 1.

Trafficking

BAM 720 (1-1-2016), p. 1, indicates that an IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. According to 7 CFR 273.16 (c)(2), an intentional program violation consists of having intentionally:

- (1) “Made a false or misleading statement, or misrepresented, concealed or withheld facts;” or
- (2) “Committed any act that constitutes a violation of the SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.”

“Trafficking” is defined as, “[t]he stealing, trading, buying, selling or attempted to have been stolen, traded, bought or sold of FAP benefits for cash or consideration other than eligible food.” BPG (10-1-2015), p. 66.

According to BEM 203 (10-1-2016), p. 2, trafficking is:

- 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.

[Emphasis added].

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked or attempted to have been trafficked. BEM 203, pp. 2-3. [Emphasis added].

Clear and convincing evidence

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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

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

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV after he purchased soda using an EBT card with the express intent of emptying the contents to obtain a refund. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

The record shows that Respondent visited the [REDACTED] in [REDACTED] Michigan and purchased soda cans and/or bottles using his EBT card. [Exh. 1, pp. 18-20]. Then, Respondent promptly dumped the contents of the soda cans/bottles and returned them to the store for a refund. [Exh. 1, pp. 18-20]. According to BEM 203, p. 2, "trafficking" occurs when an individual purchases containers with deposits, dumps/discards the product and then returns containers to obtain cash refund deposits. Here, the Department has shown that Respondent's conduct met the definition of trafficking. In addition, the Department has shown that Respondent acted intentionally because he purchased the soda with the intent to return the cans/bottles for a deposit rather than for consumption.

The Department has shown that Respondent's conduct constitutes clear and convincing evidence that he did knowingly intend to transfer, acquire, receive or trafficking benefits for use other than authorized by the Food and Nutrition Act of 2008, and; is therefore guilty of an IPV.

Disqualification

Clients who commit an IPV are disqualified from FAP benefits for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720, p. 16.

Based on the above Findings of Fact, the Department has shown by clear and convincing evidence, that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent shall be disqualified from FAP benefits for 1 year.

Overissuance

An overissuance (OI) is the amount the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8. The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) 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. [Emphasis added].

Based on the above Findings of Fact, the Department has shown by clear and convincing evidence on the whole record that Respondent trafficked FAP benefits in the amount of \$ [REDACTED]. The record in this case shows that Respondent received and then unlawfully used his EBT card to purchase soda in order to obtain a refund deposit in the amount of \$ [REDACTED]. This was unlawful as was in violation of the Food and Nutrition Act of 2008. Therefore, Respondent received an OI of FAP benefits and the Department is entitled to recoup this OI.

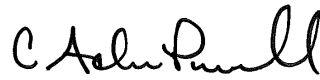
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

1. Respondent did commit an IPV due to FAP trafficking.

2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]
3. Respondent shall be disqualified from FAP benefits for a period of 12 months (1 year).

IT IS SO ORDERED.



CAP/md

C. Adam Purnell
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]

DHHS

[REDACTED]

Respondent

[REDACTED]