



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: August 21, 2017
MAHS Docket No.: 17-007319
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, 42 CFR 431.230(b), 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 August 14, 2017, from Detroit, Michigan. The Department was represented by Patrick Waldron, 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] 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to not to traffic her FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Respondent did have a representative payee who also had access to the FAP Bridge Card and pin number. (Exhibit A, p. 58.)
7. The Department's OIG indicates that the time period it is considering the fraud period is February 2016 through October 2016 (fraud period).
8. During the fraud period, Respondent was issued \$438.02 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$438.02.
10. This was Respondent's **second** alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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. 12-13; ASM 165 (August 2016), p. 1.

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.

The federal Food Stamp regulations read in part:

(c) *Definition of Intentional Program Violation.* Intentional Program Violation shall consist 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 Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

7 CFR 273.16(c)(1) and (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.

7 CFR 271.2 and see also BAM 700, p. 2 (definition of trafficking) and BEM 203 (July 2014), pp. 3-4 (FAP trafficking disqualifications are a result of the following actions: 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).

In this case, the Department alleged that Respondent trafficked FAP benefits in the amount of \$438.02 during the period February 2016 through October 2016 at the [REDACTED] (Store). A series of transactions where the Respondent used her EBT card were presented. (Exhibit A, pp. 51-52.)

The Department has based its IPV case regarding Respondent upon Respondent's alleged trafficking of FAP benefits at Store which was a small convenience store consisting of 300 square feet doing business in the City of [REDACTED]. On January 3, 2016, the Food Nutrition Service (FNS) permanently disqualified Store from eligibility to participate in the SNAP for program violations after a year investigation which determined the store was trafficking FAP benefits. (Exhibit A, pp. 11-13.) The focus of the investigation determined a pattern of trafficking that involved multiple transactions were made from individual benefit accounts in unusually short time frames and EBT transactions, excessively large purchase transactions, were made from recipient accounts. (Exhibit A, p. 13.)

The evidence presented by the Department was based upon the FNS investigation, including photos of the store, and transactions which it analyzed to find a pattern of trafficking. (Exhibit A, pp. 11-37.) The evidence presented showed one turnstile, a two-cash-register operation with no POS device, no shopping carts, or baskets, with limited counter space. There were no optical scanners used at the checkout. The food offerings did not include any fresh food, and contained convenience store items including drinks and snack foods as well as canned goods and limited supply of staple food stock with no fresh meat or frozen goods. The store also had a bulletproof barrier. (Exhibit A, pp. 17-24.)

The FNS also reviewed the purchase history at the Store which demonstrated multiple transactions in a short time period, excessively large purchase transactions over \$20.00 which were not justified for a convenience store with the limited counter space and two cash registers. There were also excessive transactions ending in \$.09, \$.00 and \$.99 with numerous back-to-back transactions. Store was charged by FNS with Food Stamp trafficking, and the establishment was permanently disqualified from the SNAP program on January 3, 2017. (Exhibit A, p. 13.)

A review of the Respondent's EBT card usage at Store showed many transactions which fit the type of transactions indicative of trafficking. As an example, on February 21, 2016, two transactions occurring three hours apart for \$83.00 and \$52.59 in a store that has only convenience foods for sale, and a turnstile bulletproof glass counter area with no counter space. In addition, one of the purchases ended in \$.00 also indicative of trafficking. The remaining three transactions also ended in \$.00 and were in the amounts of \$40.00, \$55.86, \$46.00 and \$160.57 all made on separate dates for large amounts for a party store. (Exhibit A, p. 66.)

In this case the evidence presented indicated that the Respondent was disabled and had a representative payee who had access to the Respondent's EBT card and pin number. Some of the transactions were swiped which meant the card was present, and some of the transactions were keyed which meant the EBT card was not present. Notwithstanding that the Department's evidence presented transactions that fit the profile of trafficking due to their large-dollar amounts and the transactions ending in \$.00, the Respondent in this case was physically disabled and also had a representative payee who very well could have done the trafficking; and thus, the burden of proof was not met to show by clear and convincing evidence that it was the Respondent who trafficked the FAP benefits. (Exhibit A, pp. 58 and 59.)

Based on the foregoing information and evidence presented, the Department has not established by clear and convincing evidence that Respondent committed an IPV of FAP benefits due to trafficking of the FAP benefits. The evidence is not persuasive to conclude that the Respondent was involved in trafficking. Thus, the Department has not established by clear and convincing evidence that the 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. 15-16; BEM 708 (April 1, 2014), p. 1. Clients are disqualified for ten years for a 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

The Department failed to establish an IPV due to trafficking by Respondent at Store; and thus, the Department is not entitled to a finding of disqualification.

Overissuance

In this case, an IPV due to trafficking was not established; no overissuance of FAP benefits is established as well.

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 benefits in the amount of \$438.02.

The Department is ORDERED to delete the OI and cease any recoupment action.

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

DHHS

MDHHS-Wayne-57-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

M Shumaker
Policy Recoupment
L M Ferris
MAHS