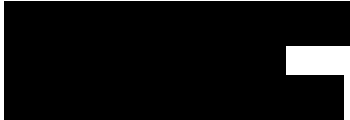




RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR



Date Mailed: December 8, 2017
MAHS Docket No.: 17-009390
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 December 4, 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 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 the 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 June 12, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by trafficking benefits and failing to report his change in residency.

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** informed of the responsibility not to traffic FAP benefits and to timely report changes in residency to the Department.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is April 2010 through October 2012 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] 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 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 United States Postal Services 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 (October 2016), pp. 5-7, 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 (January 2016), pp. 7-8; 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 of his FAP benefits because he trafficked \$ [REDACTED] of his FAP benefits at [REDACTED] (Store). The Department also alleges that Respondent committed an IPV by intentionally failing to report his move to [REDACTED] while continuing to receive \$ [REDACTED] in Michigan-issued FAP benefits.

Trafficking

Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (March 2010 and December 2011), p. 1. 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 (January 2009 and October 2012), pps. 2, 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 allegation of trafficking by the Respondent, the Department presented evidence of a finding by the United States Department of Agriculture (USDA) of trafficking by Store and a guilty plea by Store owners of conspiracy to commit food stamp fraud. Exhibit A, pp. 11-20. In addition, the USDA found that Store was accepting Supplemental Nutrition Assistance Program (SNAP) benefits in exchange for cash payments. Exhibit A, pp. 11-13. SNAP is the national name for the Michigan based FAP. The Department also presented evidence of Respondent’s use of FAP benefits at Store. Exhibit A, pp. 47-48. The Respondent’s transaction history shows that he frequented Store at the beginning of each month essentially zeroing out the balance on his EBT card each time. The history also shows that if he did not zero out the balance of his EBT card in one transaction, he made multiple transactions within minutes of each other for large dollar values. Finally, when Agent [REDACTED] spoke with Respondent regarding this case. The Respondent initially denied trafficking his benefits but once she explained the evidence against him, he told her to “send me the forms and I will sign them” indicating that he was willing to sign a repayment agreement and waiver of disqualification hearing. While the forms were never returned to the Department, Respondent’s statements implied an admission of trafficking.

Based upon the evidence presented, the Department has met its burden of proof in establishing by clear and convincing evidence that the Respondent trafficked his FAP benefits at [REDACTED].

Failure to Report Change in Residency

To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2010 and January 2012), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely.

BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (January 2010 and April 2012), p. 2.

In this case, the Department presented evidence of the Respondent's absence from the State of Michigan. The Respondent's EBT History shows that from September 5, 2011 through December 19, 2011, February 5, 2012 through March 7, 2012, May 5, 2012 through June 8, 2012, and July 9, 2012 through October 16, 2012, Respondent was using his Michigan-issued FAP benefits in [REDACTED]. Exhibit A, pp. 49-53. The EBT history also shows a correlation for the periods of time where the Respondent was actually in Michigan and holidays, applications for benefits, or interviews with the Department. For example, the Respondent's FAP case was closed effective April 2012 so he returned to Michigan, submitted an application for benefits on April 19, 2012 and appeared for an interview with the Department on April 20, 2012. The Respondent then had EBT usage in Michigan from April 27, 2012 through April 29, 2012 but returned to [REDACTED] by May 5, 2012. Around Independence Day, the Respondent had usage in Michigan on July 5th, 6th, and 7th, but left Michigan by July 8, 2012 and did not return. The Respondent's submission of an application with a Michigan address and appearance for an interview with such a prompt return to [REDACTED] and only occasional visits to Michigan around holidays is evidence of an intentional misrepresentation by the Respondent. The Department has met its burden of proof by clear and convincing evidence to establish an IPV of the FAP as a result of Respondent intentionally withholding his change of residency in order to maintain his receipt of FAP benefits in Michigan.

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. 2; BEM 708 (October 2016), 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. 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. 15.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV by trafficking FAP benefits and intentionally failing to report his change in residency. This was Respondent's first IPV; therefore, he is subject to a 12-month disqualification under the FAP program. BAM 720, pp 16.

Overissuance

When a client group receives more benefits than they are 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 amount as determined by an administrative hearing decision, repayment and disqualification

agreement, or court decision. BAM 720, p 8. As discussed above, the Department presented clear and convincing evidence to support its allegation that Respondent trafficked at Store. The EBT history shows that transactions completed by Respondent at Store totaled \$ [REDACTED] in trafficked FAP benefits. The Department may recoup the value of trafficked FAP benefits from Respondent.

The amount of a FAP OI in a residency case is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6. The Department provided evidence that the Respondent was not a Michigan resident from at least September 2011 through October 2012. The FAP Benefit Summary provided by the Department shows that the Respondent received [REDACTED] in benefits for the period from [REDACTED]. Since the Respondent was not a Michigan resident during this period, he is not eligible for benefits and the Department may recoup the benefits which is the sum of the amounts trafficked and received when he was no longer a resident.

Therefore, after a review of all of the evidence, the Department has met its burden of proof in establishing an OI and the Department is entitled to recoup or collect \$ [REDACTED] from Respondent in FAP benefits.

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 **received** an OI of program benefits in the amount of \$ [REDACTED] from the FAP.

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 FAP for a period of **12 months**.



AM/kl

Amanda M. T. Marler
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

Via email



Respondent via USPS

