



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 4, 2018
MAHS Docket No.: 17-009569
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 7, 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 Food Assistance Program (FAP) benefits?
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 June 22, 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. The Department alleges that Respondent was aware of the responsibility to use FAP benefits for lawful purchases.
5. The Department alleges that 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 May 1, 2016 through November 30, 2016.
7. The Department alleges that during the fraud period Respondent trafficked \$ [REDACTED] 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 \$ [REDACTED]
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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her 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.

Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (January 2016), p. 2; see also Department of Health and Human Services, Bridges Policy Glossary (BPG) (October 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 this case, the Department alleges that Respondent committed an IPV because he trafficked his FAP benefits at the [REDACTED] located at [REDACTED]. The Department established that it adequately notified Respondent at the time of application and when he received the Bridge card, onto which his FAP benefits were transferred via EBT, that he could not traffick his FAP benefits (Exhibit A, p. 84).

The Department presented evidence that, after an investigation by the United States Department of Agriculture Food and Nutrition Service (FNS), the [REDACTED] was charged with trafficking and that the store was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). (Exhibit A, pp. 60-61). The Department presented evidence that it gathered during its investigation and evidence that was obtained from the USDA investigation, which included general store characteristics, diagram of the store’s layout, photographs of the store layout, and a series of SNAP EBT transactions ending in a same cents value, transactions made in unusually short time frames, and transactions that involved excessively large purchase amounts (Exhibit A, pp. 26-59). To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when he used his FAP benefits at the store.

The Department contended that Respondent’s FAP purchases were trafficked because the store did not have the inventory or infrastructure to support the purchases that were being made. Specifically, according to the investigation report prepared, the Department asserted that the store is a small gas station/convenience store with no shopping carts or baskets, one point of sale device for EBT transactions, no evidence of wholesale business, no hot food sold, and no meat/seafood specials or bundles. Further, any transactions that have to be performed are done so through a plastic barrier. The Department’s report indicates that the store had limited eligible food available and had mainly snack food items, prepared/made-to-order sandwiches, soda, and some frozen foods. The store contained ineligible items such as cigarettes, lottery tickets, and automotive products. The Department maintained that the store’s inventory made it impractical to support the higher-dollar and high-volume transactions that were occurring in short amounts of time. The FNS investigation considered any purchases over \$ [REDACTED] as excessively large for the subject store. The Department testified that, approximately 100 feet behind the store, is a Glory Foods market, which is a larger supermarket at which Respondent could and did make food purchases. The Department presented Respondent’s FAP transaction history showing FAP purchases at other store locations, including Glory Foods (Exhibit A, p. 65).

In support of its contention that Respondent trafficked his FAP benefits, the Department presented Respondent’s FAP transaction history showing FAP purchases at the subject

store by date, time, and amount, as well as evidence that Respondent received FAP benefits issued by the State of Michigan during the fraud period. (Exhibit A, pp. 63-67). A review of Respondent's FAP transaction history showed the following: 1) on May 7, 2016, Respondent had two transactions within a two hour timeframe for even amounts of \$ [REDACTED] and \$ [REDACTED] 2) on [REDACTED], Respondent had two transactions that ended in the same cents value for \$ [REDACTED] and \$ [REDACTED]. Further, the transaction for \$ [REDACTED] was excessively large based on the nature of the store per the FNS standard purchase amount of \$ [REDACTED] 3) on [REDACTED] Respondent made two transactions within a five-minute timeframe and one of the transactions was over \$ [REDACTED] and 4) on [REDACTED] Respondent had transactions for \$ [REDACTED] and \$ [REDACTED] which were also large amounts for the store size as previously indicated. (Exhibit A, pp. 63-64).

The foregoing evidence, coupled with the USDA's finding that the store trafficked FAP benefits, was sufficient when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at the store.

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 an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, the standard disqualification period is 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 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 based on trafficking of FAP benefits. Because this is Respondent's first IPV, he is subject to a one-year disqualification from 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 FAP benefits at the store. The identified transactions on the transaction history total \$ [REDACTED] (Exhibit A, pp. 63-64). Therefore, based on the IG-311 provided by the Department which established Respondent's usage of FAP benefits during

the fraud period at other locations and the FAP transaction history which shows \$ [REDACTED] in countable FAP transactions at the store involved in trafficking, the evidence established that Respondent trafficked \$ [REDACTED] of his FAP benefits during the fraud period and the Department is entitled to recoup that amount.

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 did receive an OI of FAP program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy, less any amounts already recouped and/or collected.

It is FURTHER ORDERED that Respondent be disqualified from receipt of FAP benefits for a period of 12 months.

MC/kl



Michael Crews
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

A large black rectangular redaction box covering the email address.

Respondent via USPS

A large black rectangular redaction box covering the USPS address.