



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 22, 2018
MAHS Docket No.: 17-011810
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 November 1, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Senior Agent, and [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent represented herself with the assistance of her granddaughter, Majeda Majed, interpreter.

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 July 21, 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 informed of the responsibility not to sell, trade, give away, or exchange FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2013, to September 30, 2014, (fraud period).
7. The Department alleges that Respondent trafficked \$ [REDACTED] in FAP benefits at [REDACTED] (Store), in Dearborn, Michigan, during the fraud period. [Exhibit A, pp. 35-38.]
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] as a result of trafficking of benefits.
9. Store was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP) due to trafficking in food assistance benefits. [Exhibit A, pp. 9-10.]
10. This was Respondent's first 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 as of the date of hearing.

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.

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.

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.
- The client was clearly and correctly instructed regarding his or her reporting responsibilities.
- 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked \$ [REDACTED] of her FAP benefits at Store, a market, located in Dearborn, Michigan.

Trafficking is (i) the buying, selling or stealing of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits; and (iv) attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food. BAM 700 (October 2016), p. 2. 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 2017), 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.

The Department presented evidence that Store was found to have trafficked FAP benefits and had their authorization to accept FAP benefits revoked. Store was permanently disqualified by the USDA due to trafficking. [Exhibit A, pp. 9-10.] The evidence presented demonstrated that a couple Store’s managers trafficked FAP benefits at Store. One of the managers confessed his actions, to the USDA, indicating he traded FAP benefits for \$ [REDACTED] on the dollar. The manager confessed to making such transactions about 2-3 times per week. [Exhibit A, pp. 27-29.] The Department alleges Petitioner’s transactions at Store indicate she was trafficking her FAP benefits. According to Petitioner’s transaction history at Store she made 59 transactions there during the alleged fraud period. [Exhibit A, pp. 35-38.] Of the 59 transactions, the Department alleges that 7 transactions were indicative of trafficking due to the amount and/or because they occurred in a short time frame. The amount of the transactions, in question, range from \$ [REDACTED] to \$ [REDACTED]. All of the transactions in question occurred between the 11th and 14th of the month. [Exhibit A, pp.35-38.] Petitioner received her benefits on the 11th of the month. [Exhibit A, p. 39.]

The USDA conducted an investigation that demonstrated the employees at Store trafficked FAP benefits between June 2015 and September 2015. [Exhibit A, p. 34.] The Department questions Petitioner’s transactions that were conducted at Store in 2013-2014. [Exhibit A, pp. 35-38.] The confession provided to the USDA indicates the actions occurred a few times per week; and were occurring because the business was struggling

and the manager was trying to make more money. Although the manager indicated that back in 2012 he was instructed how to conduct the illegal transactions, it is not clear that was when he began such activities. There was no direct evidence that the transactions Petitioner made at Store one to two years prior to the USDA sting, were involved in the managers' trafficking of benefits. Petitioner testified that in 2013 and 2014 she made purchases of bulk items from Store. She denied ever getting anything other than food items with her FAP benefits.

To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at Store. In this case, the Department has not presented sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV of her 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. 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 not satisfied its burden of showing that Respondent committed an IPV by trafficking FAP benefits. Therefore, Respondent is **not subject** to a period of disqualification from FAP.

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 did not establish Respondent committed an IPV by trafficking her FAP benefits; therefore, she was eligible for the benefits received. The Department has not established that there was an OI due to trafficking.

Therefore, the Department is not entitled to recoup and/or collect \$ [REDACTED] from Respondent.

DECISION AND ORDER

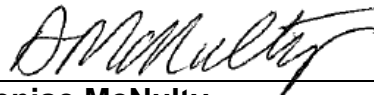
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.

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

It is FURTHER ORDERED that Respondent **not be subject** to a period of disqualification from receipt of FAP benefits.

DM/jaf



Denise McNulty
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]