



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 2, 2018
MAHS Docket No.: 17-009542
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 11, 2017, from Detroit, Michigan. Respondent appeared at the Department's Gratiot/Seven Mile office and represented herself. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG), who participated via three-way telephone conference from the Department's Jackson office.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) benefits of FAP 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 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 for cash FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit her 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, 2016 to July 31, 2016 (fraud period).
7. The Department alleges that Respondent trafficked ██████████ in FAP benefits at ██████████ (Store) in ██████████ Michigan, during the fraud period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████████ as a result of trafficking of benefits.
9. Store was permanently disqualified by the United States Department of Agriculture (USDA) from the Supplemental Nutrition Assistance Program (SNAP) due to trafficking in food assistance benefits.
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 ██████ of her FAP benefits at Store. 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. The USDA found the following actions at Store indicative of trafficking: (i) multiple transactions being made from individual benefit accounts in unusually short time frames; and (ii) excessively large purchase transactions being made from individual benefit accounts. The Department provided a copy of the USDA report as evidence in the hearing. Photos of the Store were also provided as part of the USDA report.

To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at Store. The Department presented evidence of Respondent’s FAP transaction history at Store showing that Respondent spent ██████ in FAP benefits there during the fraud period. The Department alleged that ██████ of Respondent’s FAP benefits transactions at Store involved trafficking. The alleged trafficked transactions included ██████ for a single transaction on May 17, 2016 and four transactions in June 2016 ranging from ██████.

The Department contended that Respondent's transactions were trafficked because Store did not have the inventory or infrastructure to support the high-dollar value transactions: Store had two cash registers, no optical scanners, limited counter space, and no shopping carts or baskets to assist customers with shopping/transporting items to the register or to their vehicles. The registers were behind a plastic barrier and purchased items had to pass through a turnstile to be scanned. There was no meat or cheese for sale by the pound, no meat bundles for sale, and no vegetable bundles for sale. Store sold small individually packed snack food and individual juices and pops and ineligible food items such as tobacco products, alcohol products, and paper products. Photos of Store showed that the shelves were sparingly stocked with canned and/or dry foods. Store is very small in size, approximately 300 square feet. The USDA concluded that anything over approximately [REDACTED] was considered excessively large for Store. The Department also presented evidence that showed that Respondent used her EBT card at other grocery stores regularly and, when she made purchases at other party stores, her purchases rarely exceeded [REDACTED].

The Department's evidence concerning the Store's inventory and layout and Respondent's transactions at Store, particularly the [REDACTED] transaction on May 17, 2019, coupled with the USDA findings that Store trafficked FAP benefits and was disqualified, was sufficient when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at Store and thereby committed an IPV.

At the hearing, Respondent argued that she was not familiar with Store and had never shopped there. She pointed out that all of the transactions at Store were keyed in rather than swiped, which meant that her physical card was not necessary for the transaction to occur. The OIG responded by stating that an EBT card could be keyed because the magnetic strip was not working and that Respondent's transaction history showed many keyed FAP transactions at establishments other than Store during the fraud period. The OIG also countered that, even when the card is keyed, a personal identification number (PIN) selected by Respondent would be necessary for the transaction to be completed. There was no evidence that Respondent reported any missing FAP benefits to the Department. Respondent has failed to rebut the Department's evidence that she trafficked her FAP benefits at 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. 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. Because this was the Respondent's first IPV, she is subject to a 12-month 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 presented clear and convincing evidence, through its testimony and documentation, which included Respondent's transaction history, to support its allegation that Respondent trafficked FAP benefits at Store during the fraud period. Although the Department alleged that [REDACTED] in FAP benefits were trafficked, during the hearing, it was pointed out that the transaction history showed FAP merchandise returns at Store on July 15, 2016, one for [REDACTED] the other for [REDACTED]. The OIG agent was unable to explain the returns but agreed to reduce the FAP OI due to trafficking by [REDACTED]. Therefore, the Department is 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** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **received** an OI of FAP benefits in the amount of [REDACTED].

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

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



AE/tm

Alice C. Elkin
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

[REDACTED]
[REDACTED]
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CC: [REDACTED]
[REDACTED]