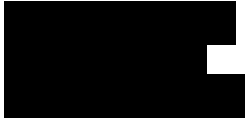




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 28, 2018
MAHS Docket No.: 17-013828
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on January 30, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On an application for assistance dated May 1, 2013, the Respondent acknowledged her duties and responsibilities including the duty to use Food Assistance Program (FAP) benefits in a manner consistent with the Food and Nutrition Act of 2008. Exhibit A, pp 120-160.
2. Respondent reported on her May 1, 2013, application for assistance that she had been found to be disabled since January 1, 2007. Exhibit A, p130.

3. Respondent reported on her May 1, 2013, application that she had requested a hearing concerning her application for social security benefits. Exhibit A, p 133.
4. Respondent received Food Assistance Program (FAP) totaling \$ [REDACTED] from March 1, 2014, through August 31, 2016. Exhibit A, pp. 116-119.
5. Respondent made purchases with her Food Assistance Program (FAP) benefits at two businesses known to engage in benefit trafficking totaling \$ [REDACTED] from March 1, 2014, through August 31, 2016. Exhibit A, pp 112-115.
6. The average purchase involving Food Assistance Program (FAP) benefits at [REDACTED] was for \$ [REDACTED] Exhibit A, p 76.
7. The average purchase involving Food Assistance Program (FAP) benefits at [REDACTED] was for \$ [REDACTED] Exhibit A, p 77.
8. Respondent made purchases at these businesses that exceeded the average purchase amount and were inconsistent with the known inventory and point of sale equipment of that business. Exhibit A, pp 42-75.
9. The Department's OIG filed a hearing request on September 5, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
10. On September 5, 2017, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
11. This was Respondent's first established IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

Overissuance

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Evidence that the client had prior knowledge of these requirements is unnecessary to establish an Intentional Program Violation (IPV) for trafficking. IPV is automatically suspected for a client who is alleged to have trafficked FAP benefits. 7 CFR 273.16, BAM 720.

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

Respondent acknowledged her duties and responsibilities including the duty to use FAP benefits in a manner consistent with the Food and Nutrition Act of 2008 on an application for assistance dated May 1, 2013. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent was a recipient of FAP benefits from March 1, 2014, through August 31, 2016. Respondent used her FAP benefits at [REDACTED] and [REDACTED], two businesses known to engage in the trafficking of benefits. The average purchase involving FAP benefits at [REDACTED] was for \$ [REDACTED] and \$ [REDACTED] at [REDACTED] and these businesses fit the description of convenience stores. Many of Respondent's purchases significantly exceeded the average purchase amount for either store. High volume purchases, such as the ones made by Respondent, were inconsistent with the known inventory of items available for purchase with FAP benefits and the point of sale equipment at those businesses. High value transactions at these convenience stores fit a known pattern of FAP trafficking, which creates an overissuance in the amount of the benefits trafficked. Some of Respondent's purchases at these businesses known to engage in FAP trafficking were not suspected of being trafficking based on their size, but the fact that they were made just minutes after other high dollar purchases. The amount of FAP benefits that fit known patterns of benefit trafficking were in the amount of \$ [REDACTED]

Respondent denied transferring her FAP benefits in a manner not authorized by the Food and Nutrition Act of 2008. Respondent testified that she shopped for food at these businesses because they were close to her home and that it was the only available source of food she could reach.

However, Respondent received FAP benefits totaling \$ [REDACTED] from March 1, 2014, through August 31, 2016. During that same period, she made purchases totaling \$ [REDACTED] at these two businesses known to engage in FAP benefits. Some of these purchases did not fit known patterns of FAP trafficking. The record evidence supports a finding that Respondent was able to make allowable purchases using her FAP benefits at legitimate businesses during this period and these two businesses were not her sole source of food.

Respondent testified that due to mental impairments, she was unable to understand her duties and responsibilities expected of her as a FAP participant. Respondent testified that she did not intentionally violate any FAP regulations. Respondent reported on her May 1, 2013, application for assistance that she was disabled since January 1, 2007.

No evidence was presented on the record that Respondent was receiving benefits based on disability. No evidence was presented on the record of the basis for determining that she was disabled on May 1, 2013, when the Department received her application. As part of the application process, Respondent acknowledged that her application form, including her duties and responsibilities, was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. No evidence that Respondent did not participate in a required eligibility interview was presented on the record. The record evidence is insufficient to establish that Respondent had a physical or mental impairment that would limit her understanding or ability to fulfill her duties and responsibilities.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and

convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

This Administrative Law Judge finds that the Department established by clear and convincing evidence that the Respondent intentionally used Food Assistance Program (FAP) benefits in a manner other than authorized by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a, and that fits the Department's definition of benefit trafficking in Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 1-22.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.

The Department has established an Intentional Program Violation (IPV).

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 Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED]

3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/nr



Kevin Scully
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]

Petitioner

[REDACTED]

Respondent

[REDACTED]