



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 26, 2018
MAHS Docket No.: 17-014880
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 22, 2018, 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 (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 Food Assistance (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 October 9, 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** aware of the responsibility to refrain from buying, selling or exchanging with a retailer for cash FAP benefits and that trafficking of FAP benefits is a violation of federal regulations and Department policy.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Although the Hearing Packet noted that Petitioner had disability it was not established that this disability was a cognitive disability which inhibited the ability to comply with the requirement not to traffick FAP benefits. Exhibit A, 46
6. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2014 through July 31, 2016 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period due to trafficking of these benefits by Respondent.
8. The Department alleges that Respondent received an OI in benefits in the amount of \$ ██████.
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 (January 2016), pps. 5, 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 (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 FAP benefits by trafficking ██████████ of her FAP benefits at ██████████ and ██████████ ██████████, convenience stores located in ██████████ ██████████ (Stores). Both of the convenience stores were owned by the same person.

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; see also Department of 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.

The Department presented evidence that after an investigation by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) that Stores were found to have trafficked FAP benefits and had their authorization to accept FAP benefits revoked. Stores were disqualified by the USDA and its license was revoked effective March 22, 2017-██████████; and January 26, ██████████ [Exhibit A, pps. 73-75]. The investigation into Stores showed that the average transaction completed ranged from \$9.00 to \$5.00. [Exhibit A, p. 94]. Looking at all of the transactions from Stores, the transactions ranged in value from \$0.25 to \$103.41 for ██████████” and \$0.10 to \$147.92 for ██████████ [Exhibit A, pp. 136-137]. In conducting the undercover operations, USDA/FNS determined that Stores were permitting the use of FAP benefits on ineligible transactions such as cigarettes, and alcohol and exchanging EBT transactions for cash at the rate of \$0.50 on the dollar. See USDA/FNS Investigation Report.

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 FAP benefits and his EBT card to make transactions at Stores. The Department presented evidence of Respondent's FAP transaction history at Stores showing that Respondent spent [REDACTED] at Stores during the fraud period. The transactions made by Respondent at the Stores were reviewed at the hearing. [Exhibit A, pps. 47-48 [REDACTED] and [REDACTED]]. The majority of the trafficking occurred at [REDACTED].

A review of the Respondent's EBT transactions at the Stores indicate that numerous transactions in excess of [REDACTED] were made at the stores, which were well above an amount for a convenience store. These transactions are check marked and are contained in the Respondent's recorded transactions at the stores which include those which are considered trafficking. [Exhibit A, p. 47-48].

Examples indicative of trafficking by Respondent were demonstrated by two large dollar amount transactions for a convenience store made on February 6, 2014 and February 7, 2014 for [REDACTED] and [REDACTED] draining the Respondents account, leaving a balance of [REDACTED]. The Department also included transactions for large amounts including [REDACTED] (6/6/14); [REDACTED] (6/7/14); [REDACTED] (9/8/14) and [REDACTED] (11/10/14). Exhibit A, p. 47. This pattern of transactions was made by Respondent at [REDACTED] no trafficking occurred at [REDACTED]. The evidence also showed that Respondent had access to other large stores in the area such as [REDACTED] which Respondent used. Exhibit A, p. 49-69. In addition, the Department presented a benefit summary inquiry to demonstrate that Petitioner received FAP benefits and an application for benefits dated June 3, 2014 which demonstrated that Petitioner was advised of her responsibilities with respect to trafficking and use of her EBT card. Exhibit A, p. 10-39. Lastly the pamphlet distributed after FAP benefits are approved about legal use of benefits and the EBT card were also presented to demonstrate the Respondent was advised of her responsibility to use her FAP benefits properly. Exhibit A, 147-163.

The Department contended that Respondent's transactions were trafficked because Stores did not have the inventory to support the high dollar value transactions. The store primarily sold beverages, chips, and other snack type food. Pictures of the premises were provided that supported the Department's assertions and testimony. Both stores had bullet proof glass and a small turnstile for transactions making it difficult to make large purchases. See Exhibit A USDA/FNS Investigation Report.

The foregoing evidence, coupled with the USDA's finding that 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 FAP benefits at Store and thereby committed an intentional program violation.

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. This was Respondent's first IPV, therefore he is subject to 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, through its testimony and Respondent's transaction history, to support its allegation that Respondent trafficked at Store totalling [REDACTED]. The Department also provided Benefit Issuance Summaries establishing that Respondent received FAP benefits throughout the fraud period. Therefore, the Department is entitled to recoup or collect [REDACTED] from Respondent.

DECISION AND ORDER

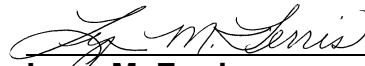
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did/not** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Food Assistance.

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 receiving Food Assistance for a period of **12 months**.

LF/tm



Lynn M. Ferris

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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