



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 19, 2018
MAHS Docket No.: 17-014407
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 April 18, 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 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 the 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 3, 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 not to buy, sell, trade, exchange, or otherwise traffic FAP benefits.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is January 2014 through December 2015 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that due to trafficking, Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
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 Service 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 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

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), pp. 7-8; 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 [REDACTED] (Store), a gas station. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. 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 (July 2013), pp. 2-3. 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 established that it adequately notified Respondent at the time of application and when she received the EBT Bridge Card that she could not traffick her FAP benefits (Exhibit A, pp. 92-109).

The Department presented evidence that after an investigation by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), Store was charged with trafficking and that Store was permanently disqualified from the federal Supplemental Nutrition Assistance Program (SNAP), also known as FAP in Michigan. The Department presented evidence from the USDA investigation showing pictures of Store as having primarily “junk food” or snack food items with no bundled meat or vegetables and only as having bananas for fruit. In addition, the pictures showed that the cash register is behind bulletproof glass and has a turnstile to pass items through to the clerk or customer. This turnstile and bulletproof glass prevent quick and large transactions from being completed easily or efficiently. The Department also presented benchmarks for other facilities in the area in comparison to Benchmarks for Store. The Department alleges that the benchmarks for Store’s average transactions and maximum dollar value transactions are significantly greater than other stores in the area of a similar nature.

However, in reviewing these benchmarks, this does not appear to be the case. In January 2014, the average transaction completed from the list of stores ranged from \$ [REDACTED] to \$ [REDACTED] and the maximum transaction values ranged from \$ [REDACTED] to \$ [REDACTED]. Store’s average transaction was \$ [REDACTED] and maximum transaction was \$ [REDACTED]. It is noted that Store’s maximum transaction value was the second highest and was second

only to [REDACTED], which may or may not be a traditional grocery store. In February 2014, the average transactions amongst all of the retailers was \$ [REDACTED] to \$ [REDACTED]. Store was the highest average transaction, but the second closest average transaction value was \$ [REDACTED] followed in third by \$ [REDACTED]. Meanwhile the maximum transactions completed ranged from \$ [REDACTED] to \$ [REDACTED]. Store was the fourth highest in maximum transaction values. In January 2015, the average transactions ranged from \$ [REDACTED] to \$ [REDACTED] (a clear outlier), seconded by \$ [REDACTED] (again an outlier); the maximum transaction values ranged from \$ [REDACTED] to \$ [REDACTED]. Ten of the 19 stores listed had maximum transaction values greater than Store. Store's average transaction was \$ [REDACTED] and its maximum transaction was \$ [REDACTED]. In February 2015, Store's average transaction value is again consistent with other stores, but its maximum transaction value is the fourth highest of the 19 stores considered. In January 2016, Store had an average transaction value of \$ [REDACTED] and a maximum transaction value of \$ [REDACTED]. Seven other stores had higher transaction values, and at least two of them were also gas stations.

Despite the above information, the USDA FNS permanently disqualified Store from use of EBT benefits. But 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 contended that Respondent's FAP purchases were trafficked because Store did not have the inventory or infrastructure to support some of the purchases made by Respondent. In addition, the dollar value and timing of transactions are indicative of trafficking. Transactions which are close in time, or back-to-back, are indicative of trafficking to split larger dollar transactions into smaller transactions or to check balances on the EBT card. The Department believes that all transactions highlighted in Exhibit A, pages 49-63, were trafficked FAP benefits. Based upon the store inventory, as shown by pictures, it is likely that some of these transactions involved trafficking of benefits, especially those transactions which are close in time or have values of \$50.00 or more. Through the pictures, it is evident that this store is small and does not have the inventory to support the purchase of food in the amount of \$ [REDACTED] as shown on page 58 of Exhibit A.

However, the evidence does not necessarily support the Department's assertion that all of the highlighted values were trafficked. For example, on page 49 of Exhibit A, the Department is asserting that a standalone transaction of \$ [REDACTED] represents trafficking; but if someone buys a couple of bags of chips and a couple of pops or juices at a gas station, it is entirely possible to have a transaction totaling \$ [REDACTED]. The same can be said for the \$ [REDACTED] transaction on page 53, \$ [REDACTED] on page 54, or \$ [REDACTED] on page 57. No threshold was provided by the Department to assist in the determination of what was or was not considered trafficking of benefits.

After a review of all of the evidence, given the number of back-to-back and higher-dollar transactions, the Department has met its burden of proof in establishing an IPV by trafficking FAP 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. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

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 amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8.

In this case, the Department alleged that Respondent trafficked \$ [REDACTED] in FAP benefits from January 2014 through December 2015. As discussed above, the Department's evidence shows that at least some of the transactions were trafficked, but the Department has not provided enough evidence to establish that all of the alleged transactions highlighted in Exhibit A were trafficked. In reviewing the case, the Department did not provide a threshold value for trafficking. Without some threshold value to establish transactions as being indicative of trafficking, the Department has not met its burden of proof in establish the value of the OI.

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. The Department **has not** met its burden of proof in establishing the value of an OI resulting from trafficking.

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

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



AM/

Amanda M. T. Marler

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]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
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