



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]-[REDACTED]

Date Mailed: May 30, 2018
MAHS Docket No.: 17-016469
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 May 23, 2018, from Detroit, Michigan. The Department was represented by Darren Bondy, 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 November 16, 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 June 2012 through November 2015 (fraud period).
7. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] as a result of trafficked benefits.
8. This was Respondent's **second** alleged IPV; Respondent served her first FAP IPV from January 1, 1996, through June 30, 1996.
9. 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 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 convenience store. 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 (October 2012), 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. In this case, the Department established that it adequately notified Respondent at the time of application and when she received the EBT card that she could not traffick FAP benefits (Exhibit A, pp. 166-184).

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 then 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 that Store is approximately 1,200 square feet in size, has no baskets/shopping carts, no optical scanner for ease of transactions, no hot food, no bundled meat or seafood, and has a turnstile at the cash register preventing quick and large transactions from easily being completed. The Department also presented photographs of the Store layout and long-shelf-life merchandise such as snack foods and condiments. 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.

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. After the investigation discussed above, any transaction with a value of more than \$40.00 was deemed as a trafficking transaction, as were back-to-back transactions and transactions greater than or equal to \$9.00 with a same-cents value. Respondent had 37 transactions over \$40.00 during the fraud period, one of which was as high as \$73.82. She did not have any back-to-back transactions, and the Department did not designate any same-cents-value transactions as fraudulent. In reviewing her transaction history at Store and elsewhere, the history shows that Respondent had the opportunity to make large-dollar transactions at more traditional grocery stores with greater inventory and quality. In June 2012, Respondent spent \$47.02 at Store, but then the next day went to Kroger and spent \$295.34. In July 2012, Respondent was shopping at [REDACTED] [REDACTED] within days of the alleged fraudulent transactions from Store. The same behavior is seen in August 2012. These patterns can be seen throughout Respondent’s EBT transaction history.

After reviewing Respondent’s FAP transaction history, overall the transactions are consistent with trafficking. The foregoing evidence, coupled with the USDA’s finding

that Store trafficked FAP benefits, 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.

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 second IPV; the first disqualification for an IPV having been served in 1996. Therefore, she is subject to a 24-month 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 June 2012 through November 2015. A review of the Respondent's IG-312 EBT History presented by the Department supports FAP trafficking in the amount alleged. (Exhibit A, pp. 95-114.) The Department is entitled to recoup \$ [REDACTED] from Respondent, the amount of trafficked FAP benefits.

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 program benefits in the amount of \$ [REDACTED] from the FAP.

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 FAP for a period of **24 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) 763-0155; 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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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M Shumaker
Policy Recoupment
A Marler
MAHS