



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 14, 2018
MAHS Docket No.: 18-000887
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 1, 2018, from Lansing, Michigan.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 79 exhibits which were admitted into evidence.

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 FAP benefits for 12 months?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on January 31, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1, 4].
2. The OIG has requested that Respondent be disqualified from receiving program benefits for 12 months. [Dept. Exh. 1, 4].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 49].
4. On January 12, 2015, Respondent submitted an application for FAP benefits. [Dept. Exh. 12-48].
5. Respondent did not have an apparent mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 21].
6. Respondent received Department Publication "How to Use Your Michigan Bridge Card," explaining in detail that the misuse of food benefits is a violation of state and federal laws punishable by disqualification from the program, fine, prison, or all three and repayment of the food benefits. DHS-Pub-322 (11-10). [Dept. Exh. 111-116].
7. On May 4, 2016, a contractor for the United States Department of Agriculture, Food and Nutrition Service (USDA-FNS) completed an onsite visit with [REDACTED] at their business address. The result of the visit found many of the transactions completed by the vendor were not supported. The USDA-FNS flagged [REDACTED] for multiple transactions being made from individual benefit accounts in unusually short time frames, the majority or all of the individual recipient benefits were exhausted in unusually short periods of time, and that excessively large purchase transactions were made from recipient accounts. An inspection of the delivery van found that it had not been driven in a very long time. The tires were in need of air, the license plate expired in February 2015, and the permits in the window of the van, a Mobile Food Establishment license, and a license issued by the State of Michigan Department of Agriculture and Road Development, Food and Dairy Division, were also expired. One in April of 2014, and the other April of 2016. The owner was unable to start the vehicle. There was no cash register. A handheld EBT machine was observed in the cab of the truck. The freezer did not appear to be in working order as it was only plugged into a non-working vehicle. [Dept. Exh. 4, 98-110].
8. On October 6, 2016, [REDACTED], was permanently disqualified by the USDA-FNS for Trafficking EBT/FAP/SNAP Benefits contrary to MCL 750.300a. [REDACTED] was a Mobile Food Vendor that delivered various meat products such as beef, chicken, and fish. [Dept. Exh. 74-75].

9. A review of Respondent's purchase history revealed that their use of the Electronic Benefit Transaction Bridge card was used to perform unauthorized FAP transactions with [REDACTED]. The high dollar transactions left Respondent with few benefits for the remainder of the month. [Dept. Exh. 4, 76-97].
10. Respondent trafficked \$ [REDACTED] in FAP benefits from the State of Michigan during the fraud period of May 1, 2015 through May 30, 2016, at [REDACTED]. [Dept. Exh. 4, 60].
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
12. This was Respondent's first alleged IPV.
13. 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.

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. BAM 720, p 12 (10/1/2017).

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 (1/1/2018), p 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.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p 16. 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 FIP or FAP concurrent receipt of benefits. BAM 720, p 16.

The amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- Documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence. BAM 720, p 8.

In this case, this is Respondent's first IPV.

Overissuance (OI)

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.

A FAP recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

Here, the Department has established that Respondent was aware that misuse of her food benefits is a violation of state and federal laws for which she may be disqualified from the program, fined, put in prison, or all three and repayment of the food benefits.

The evidence showed that Respondent made multiple high dollar transactions that were unjustified for the apparent inoperable Mobile Food Vendor with expired plates and no apparent working freezer, leaving her with a very small balance of FAP benefits for the remainder of the month. Based on the high dollar transactions from a non-working van with an apparent non-working freezer, the transactions were found to be evidence of trafficking.

Based on the evidence presented and the credible testimony of the Resident Agent, the Administrative Law Judge found the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter by trafficking her FAP benefits.

DECISION AND ORDER

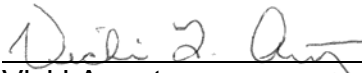
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified for 12 months from receiving FAP benefits.

VLA/nr



Vicki Armstrong
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

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]