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

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

Date Mailed: June 6, 2018
MAHS Docket No.: 17-016554
Agency No.: ███████
Petitioner: OIG
Respondent: ███████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on June 6, 2018, from Lansing, Michigan. The Department was represented by Philip Giuliani, Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits?

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?

FINDINGS OF FACT

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

1. Respondent applied for and received FAP benefits from the Department.

2. On July 6, 2011, the Department sent Respondent a pamphlet titled Important Things to Know and a brochure titled How to Use Your Bridge Card.

3. The Important Things to Know pamphlet advised Respondent that he may guilty of FAP trafficking if he were to use his FAP benefits to purchase anything other than food or seeds and plants to grow food.

4. The How to Use Your Bridge Card brochure advised Respondent that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash.

5. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.

6. In July of 2016, Respondent used his FAP benefits to make EBT transactions at ██████ in ██████

7. ██████ in ██████ is a ██████ gas station located in an urban residential area.

8. On August 5, 2016, the United States Food and Nutrition Service (FNS) visited ██████.

9. FNS found that as of August 5, 2016, ██████ had 800 square feet of space, no shopping carts or baskets, limited food inventory, non-food household supply inventory, tobacco inventory, gasoline, one cash register, and a turn-style carousel required to complete transactions.

10. FNS examined EBT transaction records for ██ ██ and found that ██████ had transactions indicative of trafficking because there were an unusual number of transactions ending in the same cents value, multiple transactions were made from individual benefit accounts in unusually short time frames, and excessively large purchase transactions were made from recipient accounts.

11. FNS identified numerous EBT transactions that were indicative of trafficking, including five transactions made by Respondent on July 9, 2016.

12. On August 30, 2016, FNS notified ██ ██ that it suspected the business of FAP trafficking and that it was charging the business with trafficking pursuant to 7 CFR 271.2.

13. On September 16, 2016, FNS notified ██████ that it had determined that ██ ██ engaged in FAP trafficking and that ██████ was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.

14. The Department conducted an investigation of Respondent's EBT transactions at ██████.

15. The Department found that Respondent made five EBT transactions at ████ on July 9, 2016, in less than one hour, which totaled $████

16. The Department determined that Respondent trafficked FAP benefits at ████ on July 9, 2016.

17. On November 20, 2017, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.

18. A notice of hearing was mailed to Respondent at his last known address and it was not returned by the United States Postal Service as undeliverable.

19. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), 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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 1, 2016), p. 1.

Trafficking is:

- The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.

- Selling products purchased with FAP benefits for cash or consideration other than eligible food.

- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

- Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

    BAM 700 (January 1, 2016), p. 2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. The Department established that Respondent made EBT transactions at ████ that were indicative of trafficking. FNS determined that DLS Fuel was engaged in FAP trafficking, and Respondent made five EBT transactions at ████ on July 9, 2016, in less than one hour, which totaled $████ Respondent did not provide any explanation for his EBT transactions at ████ Thus, I find that the evidence is sufficient to conclude that Respondent used his FAP benefits at ████ to either obtain cash or other ineligible items.

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. 15-16. In general, clients are disqualified 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. 16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

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 trafficking-related IPVs is the value of the trafficked benefits (attempted or actually trafficked) as determined by: (1) a court decision; (2) the individual's admission; or (3) 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. BAM 720, p. 8. This can be established through circumstantial evidence. BAM 720, p. 8. In this case, the Department established that Respondent trafficked FAP benefits totaling $████ Thus, Respondent received an overissuance of $████
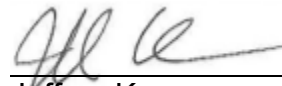
DECISION AND ORDER

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 benefits in the amount of $█████

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of $█████ in accordance with Department policy.

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

JK/nr

Jeffrey Kemm
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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Washtenaw County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Raina Nichols
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Respondent