



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 13, 2018
MAHS Docket No.: 17-017011
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 13, 2018, from Lansing, Michigan. The Department was represented by Mark Mandreky, 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 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?

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 FAP benefits, and the Department found Respondent eligible.
2. The Department sent Respondent a pamphlet titled Important Things to Know (DHS-PUB-1010) and a brochure titled How to Use Your Bridge Card.

3. The Things to Know pamphlet advised Respondent that trading or selling FAP benefits was considered FAP trafficking.
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. From June 2014 through August 2016, Respondent used his FAP benefits to complete EBT transactions with [REDACTED].
7. [REDACTED] is a business which operates as a mobile food retailer.
8. The United States Food and Nutrition Service (FNS) conducted an investigation of [REDACTED].
9. The FNS examined EBT transaction records for [REDACTED] and found that the business had transactions indicative of trafficking because there were multiple transactions from the same individual benefit accounts in unusually short time frames, the majority or all of individual recipient benefits were exhausted in unusually short periods of time, and excessively large purchase transactions were made from recipient accounts.
10. On September 21, 2016, the FNS notified [REDACTED] that it suspected the business of FAP trafficking from February 2016 through July 2016 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
11. On October 6, 2016, the FNS notified [REDACTED] that FNS had determined the store engaged in FAP trafficking and that it was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.
12. The Department conducted an investigation of Respondent's EBT transactions at [REDACTED].
13. The Department determined that Respondent trafficked FAP benefits at [REDACTED] from June 2014 through August 2016 when Respondent made EBT transactions which exhausted the majority or all of his benefits; the Department determined that the amount trafficked was \$ [REDACTED].
14. On December 27, 2017, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.

15. 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.
16. 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 (May 1, 2014), p. 1.

Trafficking is:

- The buying or selling 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.

BAM 700 (May 1, 2014), 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 not met its burden. The Department did not present sufficient evidence to establish that Respondent's transactions at [REDACTED] were indicative of trafficking as alleged by the Department. Based on the evidence presented, it is entirely possible that Respondent was making legitimate purchases of eligible food items from [REDACTED].

Although some of Respondent's transactions exhausted the majority of his benefits, Respondent was free to use his benefits as he wanted. Thus, the fact that some of Respondent's transactions exhausted the majority of his benefits cannot establish that Respondent was trafficking; it is just as likely that he was using the majority of his benefits to stock up on eligible food items. Additionally, the majority of the transactions which the Department alleged were trafficking occurred outside the time frame FNS found [REDACTED] was engaged in trafficking, so there is insufficient evidence to establish that [REDACTED] was engaged in trafficking at the time Respondent completed each of his transactions.

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. 16. Since an IPV has not been established, Respondent is not disqualified.

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 IPV's 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 did not establish that Respondent trafficked benefits, so the Department did not establish an overissuance.

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. Respondent did not receive an overissuance of FAP benefits that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.

3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP benefits.

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

DHHS

Kimberly Kornoelje
121 Franklin SE
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Kent County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
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Respondent

