



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 28, 2018
MAHS Docket No.: 18-000385
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 27, 2018, from Lansing, Michigan. The Department was represented by Philip Giuliani, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared with her husband, [REDACTED]

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 for FAP benefits.
2. The Department sent Respondent a brochure titled How to Use Your Bridge Card.

3. 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.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
5. From January 20, 2015, through January 31, 2017, Respondent used her FAP benefits at Arpita Market.
6. Respondent made 18 EBT transactions at Arpita Market which equaled or exceeded \$87.00, Respondent made 4 EBT transactions at Arpita Market which ended in the same cents value (\$.99), and Respondent made 5 EBT transactions at Arpita Market which depleted her balance of available benefits to less than \$1.00.
7. Arpita Market is a neighborhood general store located in an urban residential area.
8. Respondent purchased imported frozen fish, rice, spices, and other Bengali ingredients from Arpita Market.
9. As of October 24, 2016, Arpita Market had approximately 2,700 square feet of space, less than 10 shopping carts and baskets, no optical scanners, a single cash register, meat/seafood specials or bundles, other food inventory, and non-food household supply inventory.
10. The United States Food and Nutrition Service (FNS) conducted an investigation of Arpita Market.
11. The FNS examined EBT transaction records for Arpita Market and found that it had transactions that were indicative of trafficking because there were an unusual number of transactions ending in a same cents value (\$.99), multiple transactions were made from 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.
12. FNS determined that EBT transactions of \$86.43 or more at Arpita Market were excessive given the size of the store and its eligible inventory.
13. FNS identified 6 of Respondent's EBT transactions at Arpita Market as indicative of trafficking.
14. On January 17, 2017, the FNS notified Arpita Market that it suspected the business of FAP trafficking and that it was charging the business with trafficking pursuant to 7 CFR 271.2.

15. On February 7, 2017, the FNS notified Arpita Market 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.
16. The Department conducted an investigation of Respondent's EBT transactions at Arpita Market.
17. The Department determined that Respondent trafficked FAP benefits at Arpita Market from January 20, 2015, through January 23, 2017, when Respondent made EBT transactions which exceeded \$86.43, ended in \$.99, or depleted her balance of available FAP benefits; the Department determined that the amount trafficked was \$3,159.19.
18. On January 5, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
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 (October 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 establish by clear and convincing evidence that Respondent used her FAP benefits to make EBT transactions at Arpita Market for anything other than eligible food. Arpita Market was a neighborhood general store, which was located in Respondent's neighborhood and sold ingredients Respondent used in her Bengali recipes. Although Respondent made EBT transactions which were sometimes greater amounts than would be expected, Respondent explained that she bought imported frozen fish to make Bengali dishes and that the fish was expensive.

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. Clients are disqualified for ten 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department did not establish that Respondent committed an IPV. Thus, Respondent is not subject to a 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 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 was overissued benefits because the Department did not establish that Respondent trafficked benefits as alleged by the Department.

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 not established by clear and convincing evidence that Respondent committed an IPV.

IT IS ORDERED THAT Respondent shall not be disqualified from receiving 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

Lauren Casper
27690 Van Dyke
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Macomb 20 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
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Respondent

