RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 27, 2018
MAHS Docket No.: 18-001452
Agency No.: 102868637
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: John Markey

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 July 18, 2018, from Lansing, Michigan. The Department was represented by Nicholas Sultana, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented himself. During the hearing, 135 pages of documents were offered and admitted into evidence as Department's Exhibit A, pages 1-135.

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 filed with the Department an application for FAP benefits on September 30, 2010. (Exhibit A, page 18).

2. Respondent did not have any mental or physical impairment that would limit his understanding or ability to fulfill his responsibilities regarding his FAP benefits.

3. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of Family Bazar #1. (Exhibit A, pages 70-74).

4. FNS examined EBT transaction records for Family Bazar #1 and found that the business had transactions indicative of trafficking. The indicia of trafficking were (1) an unusual number of transactions ending in the same cents value; (2) multiple transactions made from the same account in unusually short time frames; and (3) excessively large purchases given the nature of the store.

5. On March 9, 2017, FNS issued a letter to Family Bazar #1 informing Family Bazar #1 that it was permanently disqualified from FAP as a result of FNS' finding that Family Bazar #1 engaged in FAP trafficking. (Exhibit A, pages 70-71).

6. As a result of FNS' finding that Family Bazar #1 engaged in FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at Family Bazar #1.

7. From July 10, 2015, through February 28, 2017, Respondent made 177 purchases at Family Bazar #1, 74 of which were flagged by the Department as fraudulent due to meeting one or more of the indicia indicated in paragraph 4, *supra*. (Exhibit A, pages 21-32).

8. On February 14, 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 by engaging in 74 fraudulent transactions at Family Bazar #1 from July 10, 2015, through February 28, 2017, totaling $2,286.93.

9. The OIG requested that Respondent be disqualified from receiving program benefits.

10. The Department's OIG indicates that the time period it is considering the fraud period is July 10, 2015, through February 28, 2017 (fraud period).

11. The Department alleges that Respondent received an OI in FAP benefits in the amount of $2,286.93.

12. This was Respondent's first alleged IPV.

13. Respondent credibly testified that his purchases were for eligible food products.

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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (July 1, 2013), page 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 (July 1, 2013), page 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 by clear and convincing evidence that Respondent engaged in FAP trafficking at Family Bazar #1. The Department established that FNS determined that Family Bazar #1 was engaged in FAP trafficking and that Respondent completed multiple EBT transactions there. Based on those facts, the Department established a rebuttable presumption that Respondent engaged in FAP trafficking.

Respondent, however, credibly testified that he only purchased eligible food products at Family Bazar #1, and the Department had no direct evidence to contradict Respondent's claims. Respondent's credible and consistent testimony was sufficient to rebut the presumption and prevent the forming of a firm belief that Respondent, in fact, engaged in FAP trafficking.

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, page 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, page 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, page 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, page 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, page 8. This can be established through circumstantial evidence. BAM 720, page 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.

2. Respondent did not receive an OI of FAP benefits.

3. Respondent is not subject to disqualification from receiving FAP benefits.

IT IS ORDERED that the Respondent is not disqualified from receiving FAP benefits.

IT IS FURTHER ORDERED that the Department shall delete the alleged FAP overissuance.

JM/dh

John Markey
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

Clarence Collins
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

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