MD AHMED
3970 COMMOR STREET
[redacted] MI [redacted]

Date Mailed: July 31, 2018
MAHS Docket No.: 18-001703
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 July 26, 2018, from Lansing, Michigan. The Department was represented by Regulation Agent of the Office of Inspector General (OIG) Nicholas Sultana. The Respondent appeared without representation and was given an opportunity to present any evidence and/or testimony. [redacted] a cousin who was not part of the FAP/SNAP group, appeared as a Bengali interpreter on behalf of the Respondent. Petitioner did not have an interpreter available and did not object to the Respondent's interpreter.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) or Supplemental Nutritional Assistance Program (SNAP) 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 the clear and convincing evidence on the whole record, finds as material fact:

1. At all relevant times applicable to the issues herein, Respondent has been a beneficiary of the FAP/SNAP program. Evidence indicates that Petitioner has been a beneficiary since 2015 or earlier.

2. On April 16, 2015 Respondent completed redetermination verifications acknowledging that he understood his responsibilities for the bridge card use. Included in his acknowledgments was the receipt of the Petitioner's brochure titled "How to Use Your Bridge Card" which Respondent acknowledged that he understood that trafficking of benefits can result in prosecution for fraud, and that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash or nonfood items.

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

4. From October 11, 2015 through December 31, 2016 Respondent used his FAP benefits at Family Bazar, [redacted], Michigan.

5. Respondent made over 52 EBT transactions at Family Bazar during the time period at issue targeted by the federal government, including 17 EBT transactions that equaled or exceeded $85.00, and including over 35 EBT transactions tagged by the federal inquiry where the amount ended in $00., $50, and $.99.

6. During 2016 and 2017, the USDA/United States Food and Nutrition Service (FNS) SNAP program investigated Family Bazar finding the store in an urban, residential neighborhood, with no optical scanners, no shopping baskets, no hot food, no food on site consumption, 1400 square feet, no food stored in public view, which sells numerous paper products, no deli.

7. The FNS examined EBT transaction records for Family Bazar 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; .00; and 50), 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.

8. FNS determined that EBT transactions of more than $85.00 Family Bazar were excessive given the size of the store and its eligible inventory.

9. FNS targeted Respondent in its investigation and identified numerous transactions by Respondent as indicative of trafficking.

10. On November 4, 2016, the FNS notified Family Bazar that it suspected the business of FAP trafficking and that it was charging the business with trafficking pursuant to 7 CFR 271.2.

11. On March 9, 2017, the FNS notified Family Bazar 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. The USDA/FNS investigation resulted in an evidentiary file being forwarded to the State of Michigan for prosecution of the Respondent under the state FAP policy rules and in conjunction with federal regulations for overissuance and recoupment. (Testimony of OIG witness.)

12. The Department determined that Respondent trafficked FAP benefits at Family Bazar from October 11, 2015 to December 31, 2016, when Respondent made over 52 EBT transactions under the targeted categories. The Department determined that the amount trafficked was $4,312.27.

13. On February 23, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent because of Respondent having allegedly committed an IPV.

14. 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), 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 (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)).

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. That is, federal and state law allows for intent to be inferred based on the circumstances and actions.

In this case, I find that the Department has met its burden for the reasons set forth below.

A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions at the Family Bazar as documented by the USDA Food and Nutrition Service, including an unusual high number of transactions for extra-ordinary amounts, totaling over 17 EBT transactions over $85.00, and 35 in $.00, $.50, or $.99 totaling over 52 EBT transactions ending in the same cents value. FNS also examined any multiple transactions made from individual benefit accounts in unusually short time frames along with excessively large recipient purchase transactions for a store of this size and inventory.

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 if he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Here Respondent argued that he did nothing wrong, and Family Bazar's actions are the only store. However, Petitioner pointed out that the evidence shows multiple stores. In addition, Respondent offered no receipts, and no evidence to support the Department's categories where repeated and numerous EBT transactions are considered suspect based on the unlikely possibility that numerous transactions within these categories constitute average food purchases. Respondent was targeted as a person who conducted transactions that resulted in inferred fraud triggering recoupment under the FAP/SNAP program consistent with federal regulations and state policy.

Here, the trafficking amount is $4,312.27. Respondent is responsible for $4,312.27 for the time period from October 11, 2015 through December 31, 2016 for ineligible use of FAP benefits trafficked at Family Bazar of Hamtramck, Michigan.

DECISION AND ORDER

This Administrative Law Judge based upon the above clear and convincing evidence of 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 solicit for/receive an OI of FAP benefits in the amount of $4,312.27

The Department is ORDERED to initiate recoupment/collection procedures for $4,312.27 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months in accordance with federal and state law.

JS/nr

Janice Spodarek
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 55 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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MI
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