



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: August 31, 2018
MAHS Docket No.: 18-002056
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 August 30, 2018, from Lansing, Michigan. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Does Respondent owe the Department a debt for 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. On February 17, 2017, the Department issued a lump-sum of \$3,120.00 in FAP benefits to Respondent pursuant to a Federal court order in *Barry v Lyon*. The issuance was available to Respondent through the use of an EBT card known as a "Bridge Card." Exhibit A, p. 33.
2. On March 18, 2017, Respondent's EBT card was used at Sam's Club in Battle Creek to complete two transactions totaling \$1,957.45. The majority of the transactions consisted of purchases of Red Bull. The transactions were completed

with a Sam's Club membership belonging to an individual named [REDACTED] [REDACTED]. Respondent was not present when the EBT transactions were completed. Exhibit A, p. 38-48.

3. On March 22, 2017, Respondent's EBT card was used at Meijer in Battle Creek to complete a single transaction totaling \$86.63. Respondent was not present when the EBT transaction was completed. Exhibit A, p. 51-65.
4. On March 23, 2017, Respondent's EBT card was used at Meijer in Battle Creek to complete two transactions totaling \$221.61. Exhibit A, p. 50.
5. On March 30, 2017, Respondent's EBT card was used at Wal-Mart in Battle Creek to complete a single transaction totaling \$56.93.
6. The Department conducted an investigation of Respondent's EBT transactions and determined that Respondent was engaged in trafficking. The Department determined that Respondent trafficked FAP benefits valued at \$2,331.53.
7. On March 6, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department a debt for the value of the FAP benefits trafficked.
8. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
9. 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.

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 Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (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 intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c). FAP benefits shall only be used to purchase eligible food items from approved retailers. 7 USC 2016(b) and 7 CFR 274.7(a).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(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 alleged that Respondent was engaged in the trafficking of his FAP benefits because (1) he was not present when his EBT card was used; (2) his EBT card was used to complete excessively large transactions at Sam's Club, and (3) his transactions at Sam's Club consisted of mostly Red Bull in an amount that was more than a reasonable person would purchase for personal consumption. The Department provided evidence in support of its allegations, but the Department's evidence was insufficient to establish by clear and convincing evidence that Respondent was engaged in the trafficking of FAP benefits.

Respondent may not have been present when his EBT card was used, but Respondent was not required to be. Program benefits may be used by anyone the household selects. 7 CFR 274.7. Thus, the fact that Respondent was not present when his EBT card was used does not establish that Respondent was engaged in trafficking or any violation of SNAP; Respondent could have selected someone to make his purchases for him. Since the Department's only evidence of trafficking at Meijer and Wal-Mart was that Respondent was not present, those transactions cannot be considered trafficking.

Respondent may have completed EBT transactions at Sam's Club that some would consider excessively large, but he was free to purchase as much or as little as he chose. No minimum or maximum dollar amount for EBT transactions shall be established. 7 CFR 274.7(c). Thus, the fact that Respondent's transactions at Sam's Club were excessively large does not establish that Respondent was engaged in trafficking or any violation of SNAP.

Respondent purchased a substantial quantity of Red Bull from Sam's Club, but he was free to purchase as much or as little as he chose. No evidence was presented to establish either that Red Bull was not an eligible food item or that Respondent intended to do anything with his Red Bull other than consume it himself.

For these reasons, the Department has not present sufficient evidence to establish by clear and convincing evidence that Respondent was engaged in trafficking of FAP benefits.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent committed an IPV, so he is not subject to disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, there is no evidence that Respondent trafficked benefits, so Respondent does not owe the Department a debt.

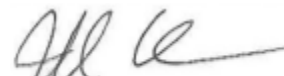
DECISION AND ORDER

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 should not be disqualified from receiving FAP benefits.
3. Respondent does not owe the Department a debt for the value of FAP benefits trafficked.

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

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

Carisa Drake
190 East Michigan
Battle Creek, MI
49016

Calhoun 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

[REDACTED]
[REDACTED], MI