



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] NV [REDACTED]

Date Mailed: August 21, 2018
MAHS Docket No.: 18-003552
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 16, 2018, from Lansing, Michigan. The Department was represented by Craig Baylis, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] 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 for FAP benefits.
2. The Department sent Respondent a brochure titled How to Use Your Bridge Card. 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. Exhibit A, p. 125-140.

3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
4. From October 2014 through October 2016, Respondent used her FAP benefits at Super One Dollar. Exhibit A, p. 52-57.
5. Respondent made 42 EBT transactions at Super One Dollar which equaled or exceeded \$24.00 or ended in the same cents value of \$.00. Exhibit A, p. 52-57.
6. Super One Dollar is a neighborhood general store located in an urban residential area.
7. As of April 2, 2016, Super One Dollar had approximately 4,096 square feet of space, less than 10 shopping carts and baskets, no optical scanners, two cash registers, food inventory, tobacco inventory, and non-food household supply inventory. Exhibit A, p. 108-122.
8. The United States Food and Nutrition Service (FNS) conducted an investigation of Super One Dollar.
9. The FNS examined EBT transaction records for Super One Dollar 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, multiple transactions were made from individual benefit accounts in unusually short time frames, and excessively large purchase transactions were made from recipient accounts. Exhibit A, p. 94-96.
10. On September 7, 2016, the FNS notified Super One Dollar that it suspected the business of FAP trafficking and that it was charging the business with trafficking pursuant to 7 CFR 271.2. Exhibit A, p. 94-96.
11. On November 7, 2016, the FNS notified Super One Dollar 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. Exhibit A, p. 106-107.
12. The Department conducted an investigation of Respondent's EBT transactions at Super One Dollar.
13. The Department determined that Respondent trafficked FAP benefits at Super One Dollar from December 2014 through September 2016, when Respondent made EBT transactions which equaled or exceeded \$24.00 or ended in the same cents value of \$.00. The Department determined that the amount trafficked was \$1,529.01.

14. On March 29, 2018, the Department's OIG filed a hearing request to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
15. 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 Super One Dollar for anything other than eligible food. The Department examined Respondent's EBT transaction history and selected the transactions it determined met the trafficking criteria determined by FNS. While some of Respondent's EBT transactions did meet the trafficking criteria determined by FNS, that alone does not establish by clear and convincing evidence that Respondent engaged in trafficking.

Super One Dollar was a neighborhood general store which was fully stocked with eligible food items and other items. The Department alleged that Respondent's transactions were indicative of trafficking because they equaled or exceeded \$24.00 or ended in the same cents value of \$.00. Based on the store report and the photos the Department provided, it would not have been unreasonable for an individual to have EBT transactions equal to or greater than \$24.00 because the store had fully stocked shelves. Further, the Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent's transactions ending in \$.00 were for anything other than eligible food items. Thus, the Department's evidence of trafficking was insufficient.

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 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. 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 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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI
48607

Saginaw County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
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Respondent

[REDACTED]
[REDACTED]
[REDACTED] NV
[REDACTED]