



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 30, 2018
MAHS Docket No.: 18-003614
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 August 29, 2018, from Lansing, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████, did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4). During the hearing, 49 pages of documents were offered and admitted into evidence as Exhibit A, pages 1-49.

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. On ██████████, 2016, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 19-29.

2. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Important Things to Know" (also known as DHS-Pub-1010). Exhibit A, p. 29.
3. DHS-PUB-1010 advised Respondent that using his FAP benefits for anything other than eligible food products for his own household's consumption was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 30-31.
4. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department. Exhibit A, pp. 23, 27.
5. On February 17, 2017, the Department issued a lump sum of \$3,120.00 to Respondent's EBT card.
6. On February 19, 2017, Respondent's EBT card was used at a Clinton Township Gordon Food Service to buy \$2,052.45 of bulk Red Bull and Monster energy drinks. Exhibit A, pp. 11-16.
7. Because of the large amount spent and peculiar nature of the items purchased, the Department flagged Respondent's account and began an investigation.
8. The matter was assigned to OIG Regulation Agency Philip Giuliani. Mr. Giuliani made multiple efforts to contact Respondent but was unable to do so. Exhibit A, pp. 1-5
9. Based on the suspicious nature of the Costco purchase and Respondent's evasions, Mr. Giuliani concluded that sufficient evidence existed to allege an IPV against Respondent for engaging in fraudulent trafficking of FAP benefits.
10. The Department's OIG filed a hearing request on April 6, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by trafficking \$2,052.45 of his FAP benefits. Exhibit A, pp. 1-3.
11. This was Respondent's first alleged IPV. Exhibit A, p. 1.
12. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, p. 1.
13. The Department's OIG indicates that the time period it is considering the fraud period is February 19, 2017, through February 19, 2017 (fraud period). Exhibit A, pp. 4-5.

14. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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 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.

The Department alleges that Respondent's February 19, 2017 purchase at Gordon Food Service was an instance of FAP trafficking, which is an IPV.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. Trafficking includes not only the improper purchase, sale, or use of FAP benefits, but also the attempt to purchase, sell, or use FAP benefits for consideration other than eligible food. BAM 700, p. 2. Trafficking may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996), p. 381. In order to sustain an IPV for trafficking, the Department must prove by clear and convincing evidence that the client intentionally committed an act involving the unlawful transfer or attempted transfer of FAP benefits. BAM 720, p. 1; see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In addition, a person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the Food Stamp Act of 1977, is guilty of the crime of Food Assistance Program (FAP) trafficking. MCL 750.300(a).

In this case, the Department has established that Respondent was aware that misuse of his FAP benefits is a violation of state and federal laws for which he may be disqualified from the program, fined, and incarcerated, amongst other potential penalties. Further, the Department made Respondent aware that it was unlawful to use his FAP benefits to purchase anything other than eligible food products for his own household's consumption.

The Department has established by clear and convincing evidence that Respondent engaged in FAP trafficking, which constitutes an IPV. Despite being made aware of the requirements and penalties for noncompliance, the evidence clearly shows Respondent intentionally violated the FAP rules and regulations. Respondent's \$2,052.45 purchase at Gordon Food Service was made two days after receiving a large lump sum on his EBT card. The purchase consisted of 54 bulk cases of energy drinks and nothing more. Clearly, such a massive quantity of energy drinks is not for personal consumption. Further, during the hearing, Mr. Beck credibly testified based on his experience that it is a common scheme for FAP fraudsters to purchase bulk energy drinks and resell them at a discount to less-than-honorable retailers. Though circumstantial, the overwhelming weight of the evidence shows that Respondent's energy drink purchase was for fraudulent purposes.

The evidence in this case, including the highly irregular nature of Respondent's large purchase immediately following a lump sum payment and the prevalence of similar fraudulent schemes, leads to only one reasonable conclusion: Respondent received a large infusion of money onto his EBT card and immediately engaged in a fraudulent scheme to spend down the balance.

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. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

Overissuance

For FAP benefits, the measure of an overissuance is the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700, pp. 1-2, emphasis added. Respondent trafficked \$2,052.00 in FAP benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2). Thus, the Department is entitled to recoup \$2,052.00 from Respondent.

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$2,052.00.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$2,052.00, less any amounts already recouped and/or collected.

It is FURTHER ORDERED that Respondent be disqualified from FAP benefits for a period of one year.



John Markey
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

JM/dh

