



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] NC [REDACTED]

Date Mailed: August 7, 2018
MAHS Docket No.: 18-005166
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 11, 2018, from Detroit, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

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 benefits for FAP?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on May 14, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was not a recipient of FAP benefits issued by the Department.
4. The Respondent's father, [REDACTED], resided in [REDACTED] Michigan, and died on [REDACTED], 2017.
5. The Respondent completed an SER burial assistance application for her deceased father on May 25, 2017, and advised the Department that he was deceased.
6. Respondent **was** aware that the deceased person's FAP benefits were issued to [REDACTED], not the Respondent.
7. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding that the card was for her father's use and issued to him, or ability to fulfill this requirement.
8. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2017, through June 30, 2017, (fraud period).
9. During the fraud period, Respondent was issued \$[REDACTED] per month in FAP benefits by the State of Michigan. The Department did not close the deceased's FAP case until June 30, 2017.
10. The Department alleges that Respondent was entitled to \$0 in such benefits during this time period when the deceased's FAP benefits were spent after May 29, 2017.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$[REDACTED] which was the amount remaining on the deceased [REDACTED] EBT card and spent by Respondent after May 29, 2017, in the State of North Carolina.
12. The Respondent admitted that she knew her father's pin number and made the nine transactions using the deceased's EBT card in [REDACTED] where she resides.
13. This was Respondent's **first** alleged 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (January 2017), pp. 12-13.

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 700 (October 2017), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); 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 this case, the Department seeks an IPV due to unauthorized use of a deceased recipient's FAP benefits by his daughter after he died. The Respondent did not deny during the hearing that she used the benefits after her father died. The deceased, [REDACTED] passed away on [REDACTED] 2017. His FAP benefits continued to be received after his death from May 20, 2017, through June 1, 2017. All purchases were made in the State of [REDACTED] by the deceased's daughter, the Respondent in a series of nine transactions in the amount of \$[REDACTED]. The Respondent applied for State Emergency Relief (SER) burial assistance with the Department for her father's funeral and applied in person at the local office. Based upon the burial application, the Department was aware that the Respondent's father was deceased and should have closed the FAP case but failed to do so. The Respondent was identified by the Department because her phone number was used to check the FAP card balance on her father's EBT card after he died. The phone number used to check the card balance was the same phone number on the SER burial assistance application. At the hearing, Respondent testified that she told the Department her father was deceased and showed the intake worker his EBT card. In addition, Respondent advised the OIG when she was interviewed by phone that she did not know that she could not use her Father's FAP benefits because she had used the EBT card to purchase food for her father in the past using the card and did not understand it was illegal or unauthorized.

Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. Trafficking also includes (i) fraudulently using, transferring,

altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (October 2015), p. 3. The federal regulations define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) ... for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2. In this case, the Department established that it adequately notified Respondent at the time of Application and when he received the Bridge Card that he could not traffick FAP benefits.

Although the Respondent’s use of the FAP benefits was unauthorized under Department policy, the Respondent was not a recipient of FAP benefits at the time she used the card and there was no evidence that she was aware or should have been aware that using the benefits was fraud or trafficking. Thus, the Department has not established an IPV for trafficking by clear and convincing evidence.

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 10 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 has not satisfied its burden of showing that Respondent committed an IPV. Therefore, the Department is not entitled to a finding of disqualification of Respondent for an IPV under the FAP program.

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 a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8.

In this case, the Department alleged that Respondent trafficked her father’s FAP benefits in the amount of \$[REDACTED] as she received consideration in the form of food when she used of her deceased father’s EBT card and FAP benefits which was only authorized to be used by her father who was the only authorized FAP recipient and user of the EBT card; and thus, the Department has established by the Respondent’s own admission that she used her father’s benefits and as such an overissuance is established which the Department is required to recoup. In this case, although no fraud was established, unauthorized use of the EBT card was established; and the Respondent received FAP that she was not entitled to receive and use, and the EBT card was issued solely for the exclusive use of [REDACTED]. Under these circumstances

the Department is entitled to a finding of overissuance in the amount of \$ [REDACTED] which it is entitled to recoup based upon the unauthorized use by Respondent of the deceased's FAP benefits after his death.


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** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

LMF/



Lynn M. Ferris

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

LaClair Winbush
MDHHS-Wayne-31-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] NC [REDACTED]

M Shumaker
Policy Recoupment
L M Ferris
MAHS