



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: August 27, 2018
MAHS Docket No.: 18-005434
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 22, 2018, from Lansing, Michigan. The Department was represented by Darren Bondy, 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). During the hearing, 79 pages of documents were offered and admitted into evidence as Department's Exhibit A, pp. 1-79.

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 filed with the Department an application for FAP benefits on [REDACTED], 2017. Exhibit A, pp. 11-32.

2. As part of the application process, Respondent certified that she received, reviewed, and understood the information contained within the DHS publication titled "Important Things to Know" (also known as DHS-PUB-1010). Exhibit A, p. 32.
3. DHS-PUB-1010 advised Respondent that trading or selling FAP benefits 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. 76-77.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
5. On May 18, 2017, the Department issued a lump sum of \$840.00 to Respondent's EBT card. Exhibit A, p. 36.
6. On May 20, 2017, a Sam's Club purchase of \$300.00 was made using Respondent's EBT card. The transaction was keyed into the retailer's system as opposed to swiped. Exhibit A, pp. 47 and 58-59.
7. The purchase was made using a Sam's Club account under the name of [REDACTED]. Exhibit A, pp. 67-75.
8. The transaction was flagged for fraud, and Mr. Bondy was assigned to investigate the matter.
9. Mr. Bondy reviewed Sam's Club's surveillance footage, transaction history, and account information and concluded that Respondent did not make the May 20, 2017, purchase at Sam's Club.
10. Mr. Bondy further concluded that sufficient evidence existed to allege an IPV against Respondent for engaging in fraudulent trafficking of FAP benefits.
11. The Department's OIG filed a hearing request on May 16, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in one fraudulent transaction from May 1, 2017, through May 31, 2017, totaling \$300.00.
12. This was Respondent's first alleged IPV.
13. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year.
14. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2017, through May 31, 2017 (fraud period).

15. 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 has alleged that Respondent committed an IPV by trafficking \$300.00 of FAP benefits on May 20, 2018, via a purchase at Sam's Club.

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 (January 1, 2016), 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 (October 1, 2016), 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). 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 her FAP benefits is a violation of state and federal laws for which she may be disqualified from the program, fined, and incarcerated, amongst other potential penalties. Further, the Department made Respondent aware that it was unlawful to allow non-group members to use her card or exchange her FAP benefits for anything other than eligible food.

The Department alleges that the May 20, 2018, Sam's Club purchase using Respondent's EBT account was an instance of trafficking. The Department conceded that all items purchased in the suspected trafficking transaction were eligible food items. The Department's position in this case is that Respondent allowed another person to use her EBT card at Sam's Club on May 20, 2018, and that such action is sufficient to establish trafficking. Thus, for the Department to make its case, it must, at the very least, show by clear and convincing evidence that the person who made the May 20, 2018, purchase at Sam's Club was someone other than Respondent.

In support of its contention that Respondent was not the person who made the purchase, the Department offered: (1) three pages of photographs taken from the surveillance video at Sam's Club showing transaction being completed at the register; (2) a document showing the purchase was made by keying in Respondent's EBT card information rather than swiping the card; (3) Sam's Club account information related to the account held by [REDACTED]; and (4) the receipt showing the purchase was made using [REDACTED] account. The Department believes that, taken together, this evidence, along with the rest of the testimony and evidence presented during the hearing, is sufficient to establish that Respondent made the purchase.

Contrary to the Department's assertions, the evidence is neither clear nor convincing with respect to the identity of the person who made the purchase on May 20, 2018, at Sam's Club. The photographs show an individual in a pink hat and teal hoodie checking out at the register. The images are grainy and of such a low-quality that one cannot even be convinced whether the person is a male or female, let alone conclude that it is someone other than Respondent. Without being able to show that it was someone other than Respondent who checked out at the register, the other pieces of evidence are nowhere near sufficient to support a finding of trafficking by clear and convincing evidence. Rather, the additional evidence merely shows that the purchase was made using Respondent's EBT card and someone else's Sam's Club membership account. That fact alone does not prove a case of trafficking. Thus, the Department failed to establish by clear and convincing evidence that Respondent engaged in FAP trafficking.

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, page 15. In general, clients are disqualified 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, page 16.

In this case, there was no IPV. Therefore, Respondent is not subject to a disqualification from receiving FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department has not shown that Respondent received more benefits than she was entitled to receive. Thus, there was no OI of benefits.

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 not receive an OI of program benefits.
3. Respondent is not disqualified from receiving FAP benefits.

IT IS ORDERED that Respondent is not disqualified from receiving FAP benefits.

IT IS FURTHER ORDERED that the Department shall delete the FAP overissuance.

JM/dh



John Markey
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

Mark Epps
4809 Clio Road
Flint, MI 48504

Genesee County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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