



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 19, 2018
MAHS Docket No.: 18-005589
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 September 18, 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). During the hearing, 68 pages of documents were offered and admitted into evidence as Exhibit A, pages 1-68.

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 was an ongoing FAP recipient. Exhibit A, pp. 58-66.

2. Respondent did not have any mental or physical impairment that would limit his understanding or ability to fulfill his obligations regarding his FAP benefits. Exhibit A, p. 64.
3. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named Deshi Barar (Deshi). At the conclusion of the investigation, FNS issued to Deshi a December 17, 2014 letter informing Deshi that it was permanently disqualified from FAP as a result of FNS' finding that the store had engaged in FAP trafficking. Exhibit A, pp. 22-23.
4. As a result of FNS' finding that Deshi engaged in FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at the store. Exhibit A, pp. 24-57.
5. From October 1, 2012, through September 30, 2014, Respondent made 71 purchases at Deshi, 31 of which were flagged by the Department as fraudulent due to meeting the Department's definition of an excessively large purchase. Exhibit A, pp. 48-50.
6. During the Department's investigation of Respondent's purchase history at Deshi, a red ledger was discovered that detailed Respondent's transaction history at Deshi. The ledger showed the Respondent used his EBT card regularly for ineligible food items. Exhibit A, pp. 43-46.
7. On May 22, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in 31 fraudulent transactions at Deshi from October 1, 2012, through September 30, 2014, totaling \$6,622.64. Exhibit A, pp. 1-6.
8. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2012, through September 30, 2014. Exhibit A, pp. 1-6.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$6,622.64. Exhibit A, pp. 1-6.
10. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-5, 65.
11. Respondent did not appear at the hearing to rebut any of the Department's allegations.
12. The Notice of Hearing sent to Respondent's most recent address on file was not returned 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), 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.

The Department has alleged that 31 of Respondent's 71 purchases at Deshi during the alleged fraud period were instances of trafficking. The Department is seeking an order finding Respondent committed an IPV with respect to FAP and requiring Respondent to repay the amount trafficked.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (August 1, 2012), page 1-2. Trafficking is defined as the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (December 1, 2011), page 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, the Department has met its burden. After an investigation, FNS determined that Deshi engaged in wide-ranging fraud with respect to accepting and redeeming FAP benefits. The Department established that Respondent made numerous large EBT transactions at Deshi during the fraud period. During the hearing, the Department presented a ledger that was linked to an ongoing credit account Respondent had at Deshi. The entries on the ledger matched with days Respondent used his EBT card at the store. Only Respondent's transactions of at least \$150 were flagged as potentially fraudulent. 31 of Respondent's 71 transactions over the course of the fraud period were so flagged. Based on the evidence presented, a purchase that large out of the store's limited inventory would be hard to accomplish. That, combined with the ledger showing ineligible food products being exchanged for FAP benefits, shows that Respondent's purchases were highly suspicious.

The evidence shows that Respondent engaged in a pattern of suspicious FAP purchases from a store that was proven to be engaged in fraudulent FAP trafficking during the same time. Respondent did not appear at the hearing to provide any explanation for his EBT transactions at Deshi. Accordingly, the Department's un rebutted testimony and exhibits established by clear and convincing evidence that Respondent engaged in unlawful 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, pages 12-13. 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, pages 12-13.

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

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, page 1. The OI amount for trafficking-related IPV's is the value of the trafficked benefits 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, page 7. In this case, the evidence shows that Respondent completed 31 transactions that qualified as trafficking. The total value of those 31 purchases was \$6,622.64. Thus, Respondent was overissued \$6,622.64.

DECISION AND ORDER

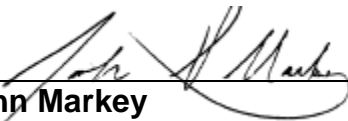
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$6,622.64 which the Department is entitled to recoup and/or collect.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$6,622.64, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of one year.

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

Lauren Casper
27690 Van Dyke
Warren, MI 48093

Macomb County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

██████████
██████████
██████ MI ██████████