



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: October 26, 2018
MAHS Docket No.: 18-006674
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 October 25, 2018, from Lansing, Michigan. The Department was represented by Darren Bondy, 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 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. On February 17, 2017, the Department issued a lump-sum of \$3,120.00 in FAP benefits to Respondent pursuant to a Federal court order in *Barry v Lyon*. The issuance was available to Respondent through the use of an EBT card known as a "Bridge Card." Exhibit A, p. 14.

2. On February 22, 2017, Respondent's EBT card was used at Sam's Club to complete a single transaction totaling \$2,340.02. The purchase included bulk quantities of frying oil, olive oil, rice, seafood, Slim Jim snack sticks, candy, gum and energy drinks. The transactions were completed with a Sam's Club membership belonging to an individual named [REDACTED]. Exhibit A, p. 25-35.
3. The large dollar amount of Respondent's transaction at Sam's Club prompted the Department to investigate Respondent's case.
4. The Department attempted to contact Respondent to obtain her explanation for the large dollar amount of the transaction, but Respondent did not respond to the Department's attempt.
5. On July 12, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department a debt for the value of the FAP benefits trafficked.
6. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
7. A notice of hearing was mailed to Respondent at her last known address, and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. 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).

Intentional Program Violation

An intentional program violation (IPV) "shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." 7 CFR 273.16(c). FAP benefits shall only be used to purchase eligible food items from approved retailers. 7 USC 2016(b) and 7 CFR 274.7(a).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(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 alleged that Respondent was engaged in the trafficking of her FAP benefits because (1) her EBT card was used to complete an unusually large transaction at Sam's Club; (2) the Sam's Club membership used to complete the transaction was not in Respondent's name; (3) Respondent was not present at the time of the transaction; and (4) the quantity of the items purchased indicated the items were not intended for personal consumption. The Department provided evidence in support of its allegations, but the

Department's evidence was insufficient to establish by clear and convincing evidence that Respondent was engaged in the trafficking of FAP benefits.

Respondent may have completed an unusually large EBT transaction at Sam's Club, but she was free to purchase as much or as little as she chose. No minimum or maximum dollar amount for EBT transactions shall be established. 7 CFR 274.7(c). Thus, the fact that Respondent's transaction at Sam's Club was excessively large does not establish that Respondent was engaged in trafficking or any violation of SNAP.

Respondent may not have been present when her EBT card was used, but Respondent was not required to be. Program benefits may be used by anyone the household selects. 7 CFR 274.7. Thus, the fact that Respondent was not present when her EBT card was used does not establish that Respondent was engaged in trafficking or any violation of SNAP. Respondent could have selected someone to make her purchases for her, and the person Respondent selected could have possessed a Sam's Club membership used to complete the transaction.

Respondent may have purchased quantities of food items which were not typical quantities purchased by FAP recipients for personal consumption. However, Respondent was free to purchase as great or little quantity of whatever items she chose. No evidence was presented to establish that Respondent purchased any ineligible food items.

Even when taking all of these circumstances into consideration together, the Department's evidence is insufficient to establish by clear and convincing evidence that Respondent was engaged in trafficking her FAP benefits. The Department did not present any evidence to establish that Respondent exchanged her EBT card for cash or any consideration other than eligible food items, and the Department did not present any evidence to establish that the eligible food items Respondent purchased were resold or exchanged for consideration other than eligible food items.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent committed an IPV, so she is not subject to disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, there is no evidence that Respondent trafficked benefits, so Respondent does not owe the Department a debt.


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 should not be disqualified from receiving FAP benefits.
3. Respondent does not owe the Department a debt for the value of FAP benefits trafficked.

IT IS ORDERED THAT Respondent shall not be disqualified from the FAP program.

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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI
48502

Genesee Union St. County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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