



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 24, 2018
MAHS Docket No.: 18-006966
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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), specifically 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 September 19, 2018, from Lansing, Michigan.

The Department was represented by Regulation Agent of the Office of Inspector General (OIG) Mark Mandreky.

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

Department Exhibits 1-111 were admitted.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) or Supplemental Nutritional Assistance Program (SNAP) 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 for 12 months?

FINDINGS OF FACT

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

1. At all relevant times applicable to the issues herein, Respondent has been a beneficiary of the FAP/SNAP program.
2. On September 30, 2014, Respondent completed redetermination verifications acknowledging that he understood his responsibilities for the bridge card use. Included in his acknowledgments was the receipt of Petitioner's brochure titled "How to Use Your Bridge Card" which Respondent acknowledged that he understood that trafficking of benefits can result in prosecution for fraud, and that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash or nonfood items.
3. Respondent did not have any physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
4. From November 1, 2014, to November 30, 2014, Respondent used his FAP benefits at All Things Inc. of 1123 Cass Ave SE, Grand Rapids, MI 49507.
5. During the alleged time-period, evidence shows that Respondent was issued FAP benefits from the State of Michigan on a Bridge Card.
6. During the alleged time-period, Respondent made an unauthorized transaction totaling \$399.86 in FAP transactions at All Things Inc. The specific transaction was targeted by the federal government and tagged by the federal government pursuant to a federal inquiry.
7. An onsite a May 24, 2016 investigation by the USDA/United States Food and Nutrition Service (FNS)/Agricultural SNAP program investigation revealed that All Things Inc. a food truck vendor, did not have a storage unit containing alleged food storage, purported that it used a van for daily business had expired license plates, had an expired business license, the van would not start, the van tires did not have air, and was staged with a new freezer that was not plugged in. There was no cash register.
8. All Things Inc. had its EBT privileges revoked by the federal government having determined that All Things Inc. engaged in trafficking pursuant to 7 CFR 271.2.
9. FNS targeted Respondent in its investigation and identified certain transactions charged by Respondent as indicative of trafficking.
10. The USDA/FNS investigation resulted in an evidentiary file being forwarded to the State of Michigan for prosecution of Respondent under the state FAP policy rules

and in conjunction with federal regulations for overissuance and recoupment. (Testimony of OIG witness.)

11. The Department argues that Respondent trafficked FAP benefits with All Things Inc. from November 1, 2014, to November 30, 2014, when Respondent had a transaction totaling \$399.86.
12. On June 20, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent because of Respondent having allegedly committed an IPV.
13. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first 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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 1, 2014), p. 1.

Trafficking is:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700 (May 1, 2014), p. 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)).

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 trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) 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, p. 8. This can be established through circumstantial evidence. BAM 720, p. 8. That is, federal and state law allows for intent to be inferred based on the circumstances and actions.

In this case, I find that the Department has met its burden for the reasons set forth below.

A review of the Respondent's EBT history revealed that their EBT Bridge card was used by All Things Inc. as documented by the USDA Food and Nutrition Service for trafficking purposes as identified by the \$399.86 transaction. Further evidence shows that All Things Inc. did not have evidence of having an inventory that would reflect the ability to sell or the ability of an individual to purchase any food of this value.

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. 16. Clients are disqualified for ten 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 if he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Here, the trafficking amount is \$399.86. Respondent is responsible for \$399.86 for the time period from November 1, 2014, to November 30, 2014, for ineligible use of FAP benefits trafficked at All Things Inc., Grand Rapids Michigan.

DECISION AND ORDER

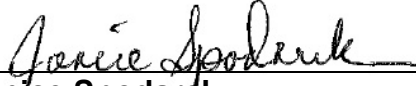
This Administrative Law Judge based upon the above clear and convincing evidence of the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$399.86.

The Department is ORDERED to initiate recoupment/collection procedures for \$399.86 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 12 months in accordance with federal and state law.

JS/hb


Janice Spodarek
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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent 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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