



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 27, 2018
MAHS Docket No.: 18-007060
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 September 26, 2018, from Lansing, Michigan. The Department was represented by Philip Giuliani, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from FAP?
3. Does Respondent owe the Department a debt for 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. From April 2015 through November 2016, Respondent used her FAP benefits to complete EBT transactions at River Rouge Deli. Exhibit A, p. 80-82.
2. On January 31, 2017, the Michigan State Police Department (MSP) completed a welfare fraud investigation of River Rouge Deli. MSP determined that River Rouge Deli was engaged in welfare fraud because it was able to use FAP benefits to

complete EBT transactions to obtain cash or other ineligible items. Exhibit A, p. 70-79.

3. On May 25, 2017, the Department executed a search warrant at River Rogue Deli. The Department photographed what it observed. The Department observed that the store had a limited inventory of eligible food items and that many of the store's eligible food items were covered with dust or expired. Exhibit A, p. 42-69.
4. The Department investigated EBT transactions at River Rogue Deli. The Department spoke with the owner and a clerk, examined EBT data, and compared sales with other local EBT retailers. Based on the Department's investigation, the Department determined that all transactions greater than \$49.00 were indicative of trafficking and all transactions in close proximity of each other were indicative of trafficking.
5. The Department conducted an investigation of Respondent's transactions at River Rogue Deli. The Department determined that Respondent made numerous transactions from April 2015 through November 2016 which were indicative of trafficking because they were either greater than \$49.00 or in close proximity to each other. The total amount of Respondent's transactions which were indicative of trafficking was \$791.50. Exhibit A, p. 80-82.
6. The Department attempted to contact Respondent, but Respondent did not respond. Respondent did not provide any explanation for her transactions at River Rouge Deli.
7. On June 29, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owed the Department the amount of the FAP benefits she trafficked.
8. 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.
9. The OIG requested recoupment of a \$791.00 debt for the value of FAP benefits trafficked, and the OIG requested that Respondent be disqualified from FAP 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), and Reference Tables Manual (RFT).

The Supplemental Nutrition Assistance Program (SNAP) is a federal food 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 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 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).

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) and BAM 720, p. 1. 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 met its burden. Respondent completed EBT transactions at River Rouge Deli, which was a retailer known to engage in the trafficking of FAP benefits. Respondent completed EBT transactions at River Rouge Deli which were excessively high considering the size of the store and its inventory of eligible food items. Respondent also completed EBT transactions at River Rouge Deli within minutes of each other. Respondent's transactions were consistent with an individual completing EBT transactions to obtain items other than eligible food items, and Respondent did not provide any explanation for her transactions. The Department presented clear and convincing evidence that Respondent's EBT transactions at River Rouge Deli were for cash or consideration other than eligible food items, either directly, indirectly, in complicity or collusion with others, or acting alone. Therefore, Respondent's conduct meets the definition of trafficking in 7 CFR 271.2.

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 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 12-month 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, Respondent engaged in trafficking when she completed EBT transactions at River Rouge Deli from April 2015 through November 2016 which totaled \$791.50. The Department requested the establishment of a debt of \$791.00. Respondent owes the Department \$791.00 because she trafficked FAP benefits valued at that amount.

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 established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from FAP.
3. Respondent owes the Department \$791.00 for the value of FAP benefits she trafficked.

IT IS ORDERED THAT the Department may initiate recoupment procedures to collect the \$791.00 debt Respondent owes the Department for the benefits she trafficked.

It is FURTHER ORDERED that Respondent shall be disqualified from the FAP program for a period of 12 months.

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

Jeanette Cowens
2524 Clark Street
Detroit, MI
48209

Wayne 41 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
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Respondent

[REDACTED]
MI