



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: November 15, 2018
MAHS Docket No.: 18-007203
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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), particularly 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 October 24, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). 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).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of her Food Assistance Program (FAP) case?
2. Should Respondent be disqualified from receiving benefits for twelve months?
3. Did the Department establish that Respondent trafficked FAP benefits that it is entitled to recoup and/or collect?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on July 12, 2018, alleging that Respondent committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to not traffic her FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 3, 2013 to November 3, 2014 (fraud period).
7. During the fraud period, Respondent redeemed her FAP benefits at [REDACTED] Store) (Exhibit A, pp. 50-52).
8. On January 26, 2017, the United States Department of Agriculture notified Store that, based on its investigation, it concluded that Store had trafficked FAP benefits and was permanently disqualified from redeeming FAP benefits (Exhibit A, pp. 65-66).
9. The Department alleges that Respondent trafficked her FAP benefits at Store during the fraud period.
10. Respondent has no prior IPV disqualifications on her record (Exhibit A, pp. 48-49).
11. 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), 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 alleges that Respondent committed an IPV by trafficking her FAP benefits and requests that she be disqualified from FAP eligibility for a 12-month period and that the Department be permitted to recoup and/or collect the benefits it alleges Respondent trafficked.

IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP] regulations, or any State statute for the purpose of . . . trafficking of [FAP] benefits or [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2); BAM 720, p. 12. Trafficking includes “buying, selling . . . or otherwise effecting an exchange of [FAP] benefits issued and accessed via [EBT] cards, card numbers and personal identification numbers (PINs) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2. To establish an IPV by trafficking, the Department must present clear and convincing evidence that the household member committed, and intended to commit, an intentional program violation. 7 CFR 273.16(e)(6).

In this case, the Department alleged that Respondent committed an IPV by trafficking her FAP benefits at Store. In support of its case, the Department presented evidence that the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) charged Store with trafficking and permanently disqualified it from the Supplemental Nutrition Assistance Program (SNAP) due to trafficking. To support a trafficking case against Respondent, however, the Department must establish by clear and convincing evidence that Respondent engaged in trafficking when she used her FAP benefits at Store.

In support of its contention that Respondent trafficked her FAP benefits, the Department presented a FAP transaction history for Respondent showing her FAP purchases at Store by date, time, and amount. Respondent’s FAP transaction history at Store showed a multitude of transactions over \$40 and up to \$88.02. Additionally, Respondent’s transaction history showed that she sometimes made multiple FAP EBT transactions at Store on the same date; on August 3, 2013 and September 9, 2013, those transactions totaled over \$100 each day.

The Department testified that the high-priced transactions were not supported by Store’s inventory. The evidence showed that Store was a small convenience store with a limited inventory of chips, pop, candy, some cereal and frozen goods, but no fresh meat, fruits or vegetables. Photographs of Store showed that it had a bulletproof plexi-glass turnstile that only allowed a limited number of items to be purchased at one time. Store’s size, inventory, and layout made Respondent’s high expense FAP purchases unlikely to be legitimate food purchases.

A review of Respondent’s transactions at Store, in consideration of Store’s inventory and layout, was sufficient to establish by clear and convincing evidence that Respondent trafficked at Store. Because the Department established by clear and

convincing evidence that Respondent trafficked her FAP benefits, it has established that she committed an IPV in connection with her FAP case.

Disqualification

An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(1). The Department established that Respondent did not have any prior IPV violations. Accordingly, she is subject to a twelve-month disqualification from the FAP program for a first IPV case. 7 CFR 273.16(b)(1)(i).

Recovery of Trafficked Benefits

The Department is entitled to recoup and/or collect from an individual the value of any benefits that are trafficked. 7 CFR 273.18(a)(1)(ii). The value of claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by the individual's admission, an adjudication, or documentation that forms the basis for the trafficking determination. 7 CFR 273.18(c)(2).

In this case, the Department established that Respondent's transactions at Store in excess of \$40 were trafficked benefits. The sum of those trafficked benefits based on its documentation is \$557.73. Therefore, the Department is entitled to recoup and/or collect \$557.73 from Respondent.

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 by trafficking her FAP benefits.
2. Respondent trafficked \$557.73 in FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$557.73 in accordance with Department policy, less any amounts already recouped and/or collected.

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



AE/tm

Alice C. Elkin
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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: [REDACTED]
IPV-Recoupment Mailbox