



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: January 22, 2019
MAHS Docket No.: 18-007511
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, an in-person hearing was held on January 16, 2019, in Jackson, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 69 pages of documents were offered and admitted into evidence as Department's Exhibit A, pp. 1-69.

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 recipient of FAP benefits.
2. On August 4, 2017, the Department issued a Redetermination, Form 1010, to Respondent to obtain relevant ongoing eligibility information from Respondent.

Respondent returned the completed Redetermination on [REDACTED], 2017. Exhibit A, pp. 23-30.

3. As part of the Redetermination process, Respondent certified that she received, reviewed, and understood the information contained within the DHS publication titled "Important Things to Know" (also known as DHS-PUB-1010). Exhibit A, pp. 23-30.
4. DHS-PUB-1010 advised Respondent that trading or selling FAP benefits was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 49-50.
5. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
6. Between June 19, 2017 and March 17, 2018, Respondent made eight suspicious purchases at a [REDACTED] on [REDACTED] and one suspicious purchase at a [REDACTED] on [REDACTED] both of which are in [REDACTED] Exhibit A, pp. 31-34.
7. Respondent's case was flagged for fraud, and [REDACTED] was assigned to investigate the matter.
8. [REDACTED] reviewed surveillance footage, transaction history, and account information and concluded that Respondent may be engaged in the fraudulent trafficking of her FAP benefits. As part of [REDACTED] investigation, [REDACTED] contacted Respondent by telephone. During their conversation, Respondent assured [REDACTED] that nobody else used her EBT card or even had access to the card. Additionally, Respondent told [REDACTED] that she never shopped at the [REDACTED] and had no idea how her benefits were repeatedly used at that store. Exhibit A, pp. 1-5.
9. [REDACTED] concluded that sufficient evidence existed to allege an IPV against Respondent for engaging in fraudulent trafficking of FAP benefits.
10. The Department's OIG filed a hearing request on July 16, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in nine fraudulent transactions from June 19, 2017, through March 17, 2018, totaling \$1,039.15. Exhibit A, pp. 1-5.
11. This was Respondent's first alleged IPV. Exhibit A, pp. 68-69.
12. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, pp. 1-5.
13. The Department's OIG indicates that the time period it is considering the fraud period is June 19, 2017 through March 17, 2018 (fraud period). Exhibit A, pp. 1-5.

14. 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), 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 Respondent committed an IPV by trafficking \$1,039.15 of FAP benefits from June 19, 2017 through March 17, 2018 via nine transactions at [REDACTED]-area [REDACTED] stores.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720 (January 1, 2016), p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. Trafficking includes not only the improper purchase, sale, or use of FAP benefits, but also the attempt to purchase, sell, or use FAP benefits for consideration other than eligible food. BAM 700 (October 1, 2016), p. 2. Trafficking may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996). In order to sustain an IPV for trafficking, the Department must prove by clear and convincing evidence that the client intentionally committed an act involving the unlawful transfer or attempted transfer of FAP benefits. BAM 720, p. 1;

see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In addition, a person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the Food Stamp Act of 1977, is guilty of the crime of Food Assistance Program (FAP) trafficking. MCL 750.300(a).

In this case, the Department has established that Respondent was aware that misuse of her FAP benefits is a violation of state and federal laws for which she may be disqualified from the program, fined, and incarcerated, amongst other potential penalties. Further, the Department made Respondent aware that it was unlawful to allow non-group members to use her card or exchange her FAP benefits for anything other than eligible food.

The Department alleges that the June 19, 2017 purchase at the [REDACTED] and the eight subsequent purchases at the [REDACTED] using Respondent's EBT account were instances of trafficking. The Department conceded that all items purchased in the suspected trafficking transactions were eligible food items. The Department's position in this case is that Respondent allowed another person to use her EBT card for each of those transactions and that such action is sufficient to establish trafficking. After reviewing the record, the Department has met its burden of proving by clear and convincing evidence that Respondent engaged in FAP trafficking.

On June 19, 2017, a person other than Respondent or her authorized representative used Respondent's EBT card to make a \$227.29 purchase at the [REDACTED] on [REDACTED]. In order to make the purchase, the individual had to obtain physical possession of the EBT card and have knowledge of Respondent's four-digit pin number. The person in the surveillance photograph showing the transaction does not appear to be Respondent. The following day, Respondent's EBT card was used to make a \$100.69 purchase at the [REDACTED] on [REDACTED]. On the 17th or 18th of each subsequent month for numerous months, Respondent's EBT card was used to make a purchase of about \$100 at the [REDACTED].

When [REDACTED] confronted Respondent with these facts, Respondent told [REDACTED] that she mainly shops at the [REDACTED] and does not shop at the [REDACTED]. Respondent denied knowing how her EBT card was used each month at about the same time to make purchases at a place where she does not shop. Additionally, Respondent denied ever giving out her EBT card or information to anyone.

Respondent's assertions are lacking in credibility. Respondent admitted to making other purchases in the days before, on, and after the suspicious transactions. Thus, each month after the EBT card was loaded with Respondent's monthly FAP benefits, purchases were made with the physical EBT card at the [REDACTED] by someone other than Respondent. Respondent then received the card back to make more purchases with the same physical EBT card for the rest of the month before repeating the process over again. It strains credulity to contend that Respondent had no knowledge of the monthly

systematic depletion of one-third of her FAP benefits, particularly considering that whoever was using the EBT card had physical possession of the card and had to know the PIN to complete the transactions.

Thus, the evidence on the record clearly shows that unauthorized and highly suspicious purchases were made using Respondent's EBT card and PIN. The nature and pattern of the purchases are indicative of trafficking. When combined with Respondent's evasive answers, nonsensical explanations, and overall lack of credibility with respect to the entire incident, the record is both clear and convincing that Respondent engaged in FAP trafficking, which is an IPV. Despite being made aware of the requirements and penalties for noncompliance, the evidence clearly shows Respondent engaged in a pattern of fraudulent transactions from June 19, 2017 through March 17, 2018.

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. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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 as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

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

For FAP benefits, the measure of an overissuance is the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700, pp 1-2, emphasis added. The undersigned Administrative Law Judge finds that, from June 19, 2017, through March 17, 2018, Respondent trafficked \$1,039.15 in FAP benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2). Thus, the Department is entitled to recoup and/or collect \$1,039.15 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:

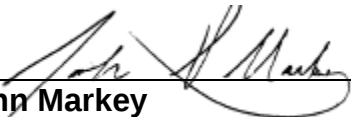
1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$1,039.15.

3. Respondent is disqualified from receiving FAP benefits for a period of 12 months.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the amount of \$1,039.15 established in this matter, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of 12 months.

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS-Jackson-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]