



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 15, 2019
MAHS Docket No.: 18-012337
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, a telephone hearing was held on January 29, 2019, from Detroit, 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, 63 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-63.

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. On [REDACTED], 2017, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 21-54.

2. On the application, Respondent acknowledged that he received, reviewed, and agreed with the pamphlet entitled "Important Things to Know" (also known as DHS-PUB-1010). Exhibit A, pp. 35.
3. DHS-PUB-1010 advised Respondent that trading, selling, or misusing 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. 42-44.
4. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department. Exhibit A, p. 26.
5. Respondent was approved for FAP benefits. On November 6, 2017, the Department loaded \$3,120 onto Respondent's EBT card. The large infusion was the result of the settlement by the Department of a lawsuit on behalf of a group of people of which Respondent was a member. Exhibit A, pp. 55-61.
6. On November 7, 2017, Respondent's EBT card was used to make three transactions at two different (████████████████████) locations in ██████████, Michigan and ██████████, Michigan. In each of the three transactions, the only items purchased were 24-packs of Red Bull, an energy drink. In total, Respondent purchased 70 24-packs of Red Bull for \$2,557.55 on November 7, 2017, just one day after the Department loaded \$3,120 onto his EBT card. Exhibit A, pp. 12-17.
7. On November 15, 2017, Respondent's EBT card was used to make another transaction at the ██████████ Michigan ██████████. This transaction was for seven 24-packs of Red Bull, totaling \$261.73. Exhibit A, pp. 12-17.
8. In the nine days after Respondent's card was supplemented with \$3,120, Respondent spent \$2,819.28 on Red Bull spread across four ██████████ transactions. Exhibit A, pp. 12-17.
9. The quantity of Red Bull purchased could not reasonably be considered to be for household consumption for a household of one.
10. Respondent's case was flagged for fraud, and Mr. ██████████ was assigned to investigate the matter.
11. Mr. ██████████ reviewed the transaction history and account information and concluded that Respondent's November 2017 ██████████ transactions were not a bona fide purchase of eligible food products meant for household consumption.
12. Mr. ██████████ further concluded that sufficient evidence existed to allege an IPV against Respondent for engaging in fraudulent trafficking of FAP benefits.

13. The Department's OIG filed a hearing request on November 26, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in four fraudulent transactions from November 7, 2017 through November 15, 2017, totaling \$2,819.28. Exhibit A, pp. 1-5.
14. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, pp. 1-5.
15. The Department's OIG indicates that the time period it is considering the fraud period is November 7, 2017, through November 15, 2017 (fraud period). Exhibit A, pp. 1-5.
16. 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 \$2,819.28 of FAP benefits on November 7, 2017 and November 15, 2017 via four fraudulent transaction at GFS.

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 2016), p. 1; 7 CFR 273.16(c).

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 2016), p. 2; 7 CFR 271.2. 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 this case, the Department has established that Respondent was aware that misuse of his FAP benefits is a violation of state and federal laws for which he 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 his card or exchange her FAP benefits for anything other than eligible food.

The Department alleges that the November 7, 2017, and November 15, 2017 [REDACTED] purchases using Respondent's EBT account were instances of trafficking. The Department conceded that all items purchased in the suspected trafficking transaction were eligible food items. The Department's position in this case is that Respondent purchased so much of a single product that it could not reasonably be consumed by a household of one. Thus, Respondent must have been doing something other than using the benefits for his own household's consumption. The Department contends that if Respondent was providing the benefits to someone who was not eligible to receive them, Respondent must have received something in return, which is unlawful trafficking.

After reviewing the record, the Department has met its burden of proving by clear and convincing evidence that Respondent engaged in FAP trafficking in the [REDACTED] transactions. On November 6, 2017, Respondent's EBT card was loaded with \$3,120. On November 7, 2017, Respondent completed three transactions at two different [REDACTED] locations using his EBT card. The transactions were for a total of \$2,557.55 and included only 24-packs of Red Bull. On November 15, 2017, Respondent returned to [REDACTED] and purchased another \$261.73 in Red Bull. Thus, in the nine days after being issued a large amount of FAP benefits, Respondent had spent nearly all of it on 24-packs of Red Bull. The timing and large dollar amount are clearly not indicative of normal purchases made for household consumption. In total, Respondent purchased 77 cases of Red Bull (1,848 cans), which is a completely unreasonable amount to expect one person to consume, even if they were meant to last for a long time. Clearly, Respondent used his benefits to purchase items for other, non-household members.

While there is no direct evidence of consideration received by Respondent in exchange for the unlawfully transferred FAP benefits, I find by clear and convincing evidence that the amount in question was unlawfully trafficked. Respondent provided to someone else other than a member of his FAP group the proceeds of his FAP benefits in a manner that is highly indicative of fraud. The evidence on the record clearly shows that the highly suspicious purchases were made using Respondent's EBT card and pin. The nature of the purchase is indicative of trafficking. When combined with Respondent's lack of any rebuttal testimony regarding the suspicious incidents, 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 four fraudulent transactions from November 7, 2017 through November 15, 2017.

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; 7 CFR 273.16(b). 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; 7 CFR 273.18(c)(2). As discussed above, on November 7, 2017 and November 15, 2017, Respondent trafficked \$2,819.28 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 \$2,819.28 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:

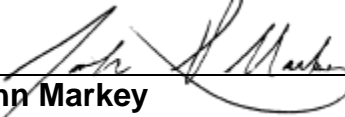
1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$2,819.28.

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 \$2,819.28 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

