



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: March 28, 2019
MAHS Docket No.: 18-013699
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 March 18, 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, 66 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-66.

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 filed with the Department an application for FAP benefits on [REDACTED], 2017. Exhibit A, pp. 33-63.

2. As part of the application process, Respondent certified that he had received, reviewed, and agreed with the information in the assistance application Information Booklet, including the Important Things to Know publication (DHS-PUB-1010). Exhibit A, pp. 44-45.
3. DHS-PUB-1010 advised Respondent that trading or selling FAP benefits or attempting to do so 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. 51-55.
4. Respondent did not have any mental or physical impairment that would limit his understanding or ability to fulfill his obligations regarding his FAP benefits. Exhibit A, p. 37.
5. Respondent was approved for FAP benefits. In addition to his normal monthly allotment, the Department issued to Respondent a lump sum of \$3,120 in FAP benefits onto Respondent's EBT card due to the settlement of a matter involving people in Respondent's situation.
6. On November 10, 2017, Respondent's EBT card was used to make a \$1,007.04 purchase at a [REDACTED] location in [REDACTED], Michigan. The items purchased were indicative of those that would be needed at a commercial food establishment. The purchase was made using a [REDACTED] account linked to an individual by the name of [REDACTED]. [REDACTED] is the owner of [REDACTED]. Just prior to the purchase, phone numbers associated with [REDACTED] and [REDACTED] were used to check the balance on Respondent's EBT card. Exhibit A, pp. 12-22.
7. At some point, Respondent's case was flagged for review by a Department worker.
8. On December 17, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in the allegedly fraudulent transaction on November 10, 2017, totaling \$1,007.04. Exhibit A, pp. 1-9.
9. The Department's OIG indicates that the time period it is considering the fraud period is November 10, 2017, through November 10, 2017. Exhibit A, pp. 1-9.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,007.04. Exhibit A, pp. 1-9.
11. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9; 64-65.
12. Respondent did not appear at the hearing to rebut any of the Department's allegations.

13. The Notice of Hearing sent to Respondent's most recent address on file was not returned 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 has alleged that Respondent's November 10, 2017 purchase at GFS was an instance of trafficking. The Department is seeking an order finding Respondent committed an IPV with respect to FAP and requiring Respondent to repay the amount trafficked.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 2016), p. 1. Trafficking is defined as buying, selling, or stealing FAP benefits for cash or consideration other than eligible food or the attempt to do so. 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).

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)).

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 10, 2017 [REDACTED] purchase using Respondent's EBT account was an 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 purchased so much product that it could not reasonably be consumed by a household of one, particularly considering Respondent represented himself to be homeless and most of the items consisted of perishable food items. 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's November 10, 2017, [REDACTED] purchase was an instance of FAP trafficking. On that day, Respondent completed a transaction at [REDACTED] using his EBT card and FAP benefits. The transaction was for \$1,007.04 and included a mix of items that would most reasonably be expected to be included on a shopping list for a commercial entity. Notably, the purchase was made using a [REDACTED] account belonging to an individual who owns and operates a commercial entity in [REDACTED] Michigan, not far from the [REDACTED] where the items were purchased. Additionally, prior to the purchase, two balance inquiries were called in requesting the balance on Respondent's EBT card. Both of those calls were from numbers associated with the commercial entity. Thus, Respondent's FAP benefits were used to purchase \$1,007.04 of food items in one transaction, mostly on bulk items that are most reasonably expected to be purchased by commercial entities. The large dollar amount and items purchased are clearly not indicative of normal purchases made for household consumption. 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 amounts in question were 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 suspicious purchase was made using Respondent's EBT card and pin under the [REDACTED] account of a commercial entity and that just prior to making the purchase, the owner of the commercial entity called in a balance inquiry on the card. The nature of the purchase is indicative of trafficking. When combined with Respondent's lack of any rebuttal testimony regarding the suspicious 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 fraudulent transaction on November 10, 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, pp. 15-16; 7 CFR 273.16(b). In general, Clients are disqualified 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.

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

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7 CFR 273.18. The OI amount for trafficking-related IPV is the value of the trafficked benefits 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; 7 CFR 273.18(c)(2). In this case, the evidence shows that Respondent completed one transaction that qualified as trafficking. The total value of that transaction was \$1,007.04. Thus, Respondent was overissued \$1,007.04.

DECISION AND ORDER

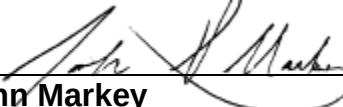
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$1,007.04, which the Department is entitled to recoup and/or collect.
3. Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$1,007.04, less any amounts already recouped and/or collected.

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

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-Wayne-17-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]