



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

Date Mailed: May 2, 2019
MOAHR Docket No.: 18-013827
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 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 April 29, 2019, 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 31 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-31.

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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], 2016, Respondent filed an application for FAP benefits with the Department. Exhibit A, pp. 11-20.

2. Respondent signed the application, thereby certifying that all the information contained in the application was true. Exhibit A, p. 25.
3. Respondent did not have an apparent mental or physical impairment.
4. Respondent's application for FAP benefits was approved and Respondent began receiving FAP benefits on his EBT card. Respondent did not have any other authorized users on his account. Thus, to use his FAP benefits, Respondent's EBT card and PIN had to be presented at the point of sale. Exhibit A, p. 21.
5. Respondent was booked into the [REDACTED] Jail on or about March 13, 2017. Though Respondent has moved from one facility to another, Respondent has remained incarcerated through at least the date of the hearing in this matter. Exhibit A, pp. 27-30.
6. After Respondent was incarcerated, he continued to receive FAP benefits from the Department. From April 1, 2017, through October 31, 2017, Respondent was issued \$1,356 in FAP benefits, and Respondent's EBT card and PIN were used to make numerous purchases. Exhibit A, pp. 21-26.
7. The Department's OIG filed a hearing request on December 26, 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-9.
8. The Department alleges an overissuance of FAP benefits in the amount of \$1,356 based on Respondent's FAP benefits being used while Respondent was incarcerated. Exhibit A, pp. 1-9.
9. This was Respondent's first alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9.
10. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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 alleges that Respondent was not eligible to receive any FAP benefits during the period he was incarcerated and that the use of Respondent's FAP benefits while Respondent was incarcerated was the result of unlawful trafficking of FAP benefits by Respondent, which constitutes an IPV.

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 or sale of FAP benefits, but also the attempt to purchase or sell FAP benefits for consideration other than eligible food. BAM 700 (January 2016), pp. 1-2; 7 CFR 271.2. An individual who offers to sell his or her benefits by either making an offer in a public way or posting an EBT card for sale online has committed an IPV. 7 CFR 274.7(b). The posting of an EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in an IPV. 7 CFR 274.7(a).

An IPV requires that the Department establish its allegation by clear and convincing evidence. BAM 720, p. 1; see also 7 CFR 273.16(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 evidence on the record established that Respondent's FAP benefits were used to make many purchases during Respondent's incarceration, which began on or about March 13, 2017, and continued through at least the date of the hearing in this matter. The Department's position is that because Respondent was incarcerated, the benefits must have been trafficked, as Respondent had no way to make the purchases himself.

Certainly, the Department has proven that those purchases were not made lawfully as they were not purchases of eligible food products for the household's consumption. However, the inquiry does not end at that point. In order to be subject to an IPV disqualification for trafficking, one must be shown to have exchanged other consideration for the FAP benefits in question. In this case, there is not even an allegation of an exchange of consideration. Thus, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV by trafficking FAP benefits.

Additionally, the Department alleges that Respondent failed to properly report his move to institutionalized status within ten days of the change, which would constitute a separate basis for finding an IPV. BAM 105 (October 2016), p. 9; 7 CFR 273.12; 7 CFR 273.21. However, in order to substantiate the allegation, the Department must prove all of the elements of an IPV. One of the elements is that the Department must have clearly and correctly instructed the client of the rules that the client is alleged to have broken. In this case, there was no evidence that Respondent was informed of the requirement to report changes to the Department. Thus, the Department cannot establish an IPV for Respondent's alleged failure to follow those rules.

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 10 years for an 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; 7 CFR 273.16(b). 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 IPV related to FAP benefits. Thus, Respondent is not subject to a disqualification.

Overissuance

For trafficked 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 (January 2016), pp. 1-2; 7 CFR 273.18(c)(2). As discussed above, the Department has not shown that Respondent trafficked FAP benefits illegally in violation of BAM 720 and 7 CFR 273.16(c)(2). Thus, the Department has not established an overissuance of FAP benefits on that basis.

However, a resident of an institution is not eligible for FAP benefits. BEM 212 (October 2015), p. 8. Respondent was a resident of an institution as of March 13, 2017. In these instances, the measure of an overissuance is the amount of benefits issued to the client in excess of what it was eligible to receive. BAM 700, p. 1; 7 CFR 273.18. After

becoming a resident of an institution, Respondent received at least \$1,356 in FAP benefits. Thus, the Department has presented sufficient evidence to substantiate that overissuance finding. Thus, the Department is entitled to recoup and/or collect \$1,356 from Respondent.

DECISION AND ORDER

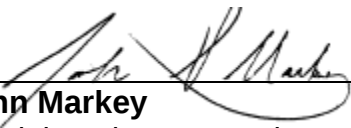
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to the Food Assistance Program.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,356 that the Department is entitled to recoup and/or collect.
3. Respondent is not subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall initiate recoupment/collection procedures for the amount of \$1,356 in accordance with Department policy, less any amounts already recouped or collected.

It is FURTHER ORDERED that Respondent shall not be 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Saginaw-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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