



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: May 22, 2019
MOAHR Docket No.: 18-012339
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. A hearing scheduled for March 14, 2019, was adjourned. After due notice, telephone hearing was held on April 23, 2019, from Lansing, Michigan. The Department was represented by H. Daniel Beaton, Jr, Assistant Attorney General, Jennifer Allen, Regulation Agent of the Office of Inspector General (OIG), and Lorrie Beats. Respondent was represented by her attorney [REDACTED], and Respondent was present at the hearing.

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 Food Assistance Program (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] [REDACTED] 2017, the Department received an application for Food Assistance Program (FAP) benefits listing Respondent as the Health Coverage Authorized Representative for her father. Exhibit A, pp 19-49.

2. The [REDACTED] [REDACTED] 2017, application form indicates that Respondent and the Food Assistance Program (FAP) benefits grantees lived at the same address in [REDACTED] [REDACTED] Exhibit A, p 21.
3. On [REDACTED] [REDACTED] 2017, the Department received a Redetermination (DHS-1010) form signed by Respondent as the Authorized Representative (AR) for her father and mother. Exhibit A, pp 50-57.
4. The [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) form indicates that the Food Assistance Program (FAP) grantees continued to live at the same [REDACTED] [REDACTED] address as Respondent, the authorized representative of the grantees. Exhibit A, p 50.
5. Respondent's signature on the [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) form acknowledged that the form had been examined by or read to the applicant, and to the best of her knowledge, the facts it contained were true and complete. Exhibit A, p 56.
6. On [REDACTED] [REDACTED] 2018, the Department received a Redetermination (DHS-1010) form indicates that Respondent lived at the same address as the Food Assistance Program (FAP) grantee. Exhibit A, pp 58-65.
7. Respondent's parents were ongoing Food Assistance Program (FAP) recipients from April 1, 2017, through May 31, 2018. Exhibit A, pp 14-16.
8. Respondent's parent's received Food Assistance Program (FAP) benefits totaling \$4,958 from April 1, 2017, through May 31, 2018. Exhibit A, pp 15-16.
9. Respondent used her parent's Food Assistance Program (FAP) benefits to make 25 purchases at Kroger stores totaling \$4,348.62. Exhibit A, pp 75-99.
10. The Department's OIG filed a hearing request on November 26, 2018, to establish an Intentional Program Violation (IPV) as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
11. On November 26, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$5,121 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
12. This was Respondent's first established IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

Federal regulations provide the following definition of intentional program violations:

Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

An Intentional Program Violation (IPV) is established where an authorized representative (AR) is determined to have committed an IPV by a court decision, and administrative hearing decision, or the AR signing a Request for Waiver of Disqualification Hearing. BAM 720, p 2.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Trafficking includes the buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes attempting to buy, sell, steal, or otherwise affect an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), pp 1-2.

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud 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), p 381.

Federal regulations limit the use of FAP benefits to purchase eligible food items and the people that are permitted to consume those food items.

Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits. 7 CFR 274.7(a).

Respondent, acting as an authorized representative (AR), assisted with her father's application for FAP benefits received by the Department on February 28, 2017. As the authorized representative, she was in a position to have access to the benefits card that her parent's monthly allotment of FAP benefits could be accessed.

The FAP benefits granted to Respondent's parents by the Department were intended for the purchase of food for that FAP benefit group, which consisted of only Respondent's parents. Respondent was not a member of that benefit group, which consisted of the individuals living with her but purchasing food and preparing meals for home consumption separate and apart from Respondent. 7 CFR 273.1(a). Respondent could have been a member of her parent's FAP benefit group if she had chosen to while her parents were living in her home, but Respondent's income would have been considered when determining their eligibility for benefits.

The Department alleges that at some point, Respondent's parent's left Respondent's home and then left the country some time after that. Respondent's attorney argues that the parents remained in the home where Respondent continued to manage their FAP benefits as the authorized representative.

On [REDACTED], 2017, the Department received a Redetermination (DHS-1010) form signed by Respondent as authorized representative asserting that the parents continued to live at Respondent's address. The fact that the Department continued to send forms to Respondent's address neither proves nor disproves that the parents were living at that address because the forms would have been sent to the authorized representative regardless of where the parents were living. Further, Respondent's parents remained eligible for the same amount of FAP benefits as long as they remained living in Michigan, regardless of which of their children they were living with.

The evidence supports a finding that Respondent used her parent's FAP benefits to purchase items at Kroger's grocery store. The Department established that it was Respondent that made those purchases from store records showing that the purchases were made using a shopper's card registered to Respondent. Some of the purchases at Kroger were made using a shopper's card not registered under any name. The

circumstances of those purchases made with FAP benefits granted to Respondent's parents support a finding that all the purchases made at Kroger with those FAP benefits were made by Respondent.

It was not disputed that Respondent's parents left the country without any intent of being residents of Michigan in the future. It was disputed whether the parents were living at Respondent's address before leaving the country, but Respondent was only authorized to make purchases with the FAP benefits for use by her parents. Respondent's attorney called on number witnesses that testified that Respondent's parents were living in Respondent's home. The Department did not call on any witnesses with personal knowledge of where Respondent's parents were living from April 1, 2017, through May 31, 2018, but instead relied on the conclusions of its agents that investigated the case.

The key fact in this case is not the location where the parents were sleeping each night because their eligibility for FAP is not relevant here. The key fact here is whether Respondent used the FAP benefits to make purchases for her parent's, or for some unauthorized use.

The hearing records supports a finding that Respondent had access to her parent's FAP benefits, and it was not disputed that the parents needed someone to manage those benefits for them. The evidence supports a finding that at some point, the parent's left the country, which was not reported by Respondent as Authorized Representative for her parents. Even though there was testimony disputing the Department's allegations, the evidence taken as a whole clearly supports a finding that Respondent was using her parent's FAP benefits for some other purpose than purchasing food for the sole use of her parent's as required by federal regulations and Department policy. The hearing record does not establish who made the purchases not made at Kroger stores.

This Administrative Law Judge finds that the Department has established by clear and convincing evidence that Respondent made purchases with her parent's FAP benefits at Kroger, and that the items purchases with those FAP benefits were not for use by Respondent's parents. The use of FAP benefits by a person not included in the FAP benefit group is an act that constitutes a violation of federal regulations and Department policy. Such an act fits the definition of an Intentional Program Violation (IPV) and creates an overissuance in the amount of the FAP benefits transferred. The evidence supports a finding that between April 1, 2017, and May 31, 2018, Respondent fraudulently use her parent's FAP benefits at a Kroger stores for 25 separate purchases totaling \$4,348.62, which created an overissuance in that amount.

This Administrative Law Judge finds that the Department established by clear and convincing evidence that Respondent intentionally used Food Assistance Program (FAP) benefits in a manner that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, and that fits the Department's definition of an Intentional Program Violation (IPV) in Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 1-22.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.


The Department has established an Intentional Program Violation (IPV).

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 did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$4,348.62.
3. The Department is ORDERED to reduce the OI to \$4,348.62 for the period of April 1, 2017, through May 31, 2018, and initiate recoupment procedures in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/hb



Kevin Scully
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

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