



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: April 2, 2019
MAHS Docket No.: 18-012354
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 28, 2019, from Lansing, Michigan. The Department was represented by Rick Rafferty, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (FAP)?
3. Does Respondent owe the Department a debt for the value of FAP benefits trafficked?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department approved Respondent for FAP benefits and issued FAP benefits to his household thereafter.
2. On November 9, 2017, Respondent used [REDACTED] [REDACTED] FAP benefits to complete a transaction at [REDACTED]. Respondent placed a barcode from an eligible

food item on two wiper blades. Respondent then scanned the barcode from the eligible food item instead of the barcodes for the items, and Respondent used [REDACTED] FAP benefits to pay for the items as if they were eligible food items. The price of the windshield wipers was \$31.98. Respondent scanned two barcodes for eligible food items each priced at \$1.98, so he paid a total of \$3.96 in FAP benefits for the two wiper blades. Respondent purchased other items too and paid a total of \$23.08 with [REDACTED] FAP benefits for everything.

3. On November 22, 2017, Respondent used his FAP benefits at [REDACTED]. Respondent placed a barcode from an eligible food item on toilet paper and a mop. Respondent then scanned the barcode from the eligible food item instead of the barcodes for the items, and Respondent used his FAP benefits to pay for the items as if they were eligible food items. The price of the toilet paper was \$24.68, and the price of the mop was \$9.24. Respondent scanned three barcodes for eligible food items each priced at \$1.98, so he paid a total of \$5.94 in FAP benefits for the three items.
4. Respondent and [REDACTED] were prosecuted for retail fraud for the transactions.
5. The Department investigated the transactions and determined that they were indicative of trafficking FAP benefits.
6. The Department attempted to contact Respondent to obtain his explanation for the transactions, but the Department was unable to obtain Respondent's explanation.
7. On November 28, 2018, the Department's OIG filed a hearing request to establish (a) that Respondent committed an IPV by trafficking FAP benefits and (b) that Respondent owes the Department a debt equal to the value of the FAP benefits he trafficked.
8. The OIG asserted that Respondent trafficked FAP benefits worth \$9.90 because he used \$3.96 in FAP benefits to obtain ineligible items on November 9, 2017, and he used \$5.94 in FAP benefits to obtain ineligible items on November 22, 2017.
9. The OIG requested an order that (a) disqualifies Respondent from FAP for 12 months for a first IPV and (b) establishes that Respondent owes the Department a debt of \$9.90 for the value of FAP benefits trafficked.
10. A notice of hearing was mailed to Respondent at his last known address, and it was not returned by the United States Postal Service 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 Supplemental Nutrition Assistance Program (SNAP) is a federal created program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its food assistance program pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Intentional Program Violation

An intentional program violation (IPV) “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).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP 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;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP 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.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(e)(6) and BAM 720, p. 1. 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, I find that the Department has met its burden. Respondent used his FAP benefits at Wal-Mart to obtain ineligible items when he placed barcodes from eligible food items on ineligible items, scanned the items as eligible food items, and then paid for the items with FAP benefits as if they were eligible food items. The Department presented clear and convincing evidence that Respondent's transactions were for consideration other than eligible food items, either directly, indirectly, in complicity or collusion with others, or acting alone. Therefore, Respondent's conduct meets the definition of trafficking in 7 CFR 271.2.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

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 12-month disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, Respondent engaged in trafficking when he placed barcodes from eligible food items on ineligible items, scanned the items as eligible food items, and then paid for the items with his FAP benefits as if they were eligible food items. Respondent used FAP benefits to pay \$9.90 for ineligible items, so that is the value of FAP benefits he trafficked.

DECISION AND ORDER

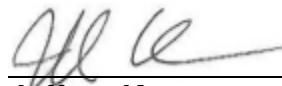
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from the Food Assistance Program.
3. Respondent owes the Department \$9.90 for the value of FAP benefits he trafficked.

IT IS ORDERED that the Department may initiate recoupment procedures to collect the \$9.90 debt Respondent owes the Department for the benefits he trafficked.

IT IS FURTHER ORDERED that Respondent shall be disqualified from the Food Assistance Program for a period of 12 months.

JK/hb



Jeffrey Kemm

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

DHHS

Kim Lauterwasser
230 Huron St.
Grayling, MI 49738

Crawford County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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██████████, MI ██████████