



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: February 11, 2019
MAHS Docket No.: 18-013451
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 February 7, 2019, from Lansing, Michigan. The Department was represented by Clarice Bridges, Regulation Agent of the Office of Inspector General (OIG). Respondent, [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. On February 17, 2017, the Department issued a lump-sum of \$3,120.00 in FAP benefits to Respondent pursuant to a Federal court order in *Barry v Lyon*. The issuance was available to Respondent through the use of an EBT card known as a "Bridge Card."

2. On March 17, 2017, Respondent's EBT card was used at [REDACTED] to complete a single transaction totaling \$1,280.26. The purchase consisted of mostly drinks. The transaction was completed with a [REDACTED] membership belonging to an individual other than Respondent.
3. The Department investigated Respondent's EBT transaction and determined that Respondent's transaction at [REDACTED] was indicative of trafficking because it was for an excessively large amount and it was completed with a membership belonging to someone other than Respondent.
4. The Department attempted to contact Respondent to obtain his explanation for the transaction, but the Department was unable to obtain Respondent's explanation.
5. On December 11, 2018, the Department's OIG filed a hearing request to establish (a) that Respondent committed an IPV by trafficking FAP benefits at Sam's Club and (b) that Respondent owes the Department a debt for the value of the FAP benefits he trafficked.
6. 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 \$1,280.26 for the value of FAP benefits trafficked.
7. 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

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance 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 (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. 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).

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). FAP benefits shall only be used to purchase eligible food items from approved retailers. 7 USC 2016(b) and 7 CFR 274.7(a).

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). 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 not met its burden. The Department alleged that Respondent was engaged in the trafficking of his FAP benefits because (a) his EBT card was used to complete an excessively large transaction at Sam's Club and (b) the [REDACTED] membership used to complete the transaction was not in Respondent's name. The Department provided evidence in support of its allegations, but the Department's evidence was insufficient to establish by clear and convincing evidence that Respondent was engaged in the trafficking of FAP benefits.

Respondent's transaction at [REDACTED] was excessively large, but Respondent was free to purchase as much or as little as he chose. No minimum or maximum dollar amount for EBT transactions shall be established. 7 CFR 274.7(c).

Respondent completed his transactions with a [REDACTED] membership that was not in his name, but that does not establish that Respondent trafficked his FAP benefits. Respondent could have been present with the [REDACTED] member and used the member's account to purchase his food, or Respondent could have selected the [REDACTED] member to purchase his food for him. Although these may have been violations of the [REDACTED] member's agreement, they were not violations of SNAP. Program benefits may be used by anyone the household selects. 7 CFR 274.7.

Even when taking these circumstances into consideration together, the Department's evidence is insufficient to establish by clear and convincing evidence that Respondent was engaged in trafficking his FAP benefits. The Department did not present any evidence to establish that Respondent exchanged his EBT card for cash or any consideration other than eligible food items, and the Department did not present any evidence to establish that the eligible food items Respondent purchased were resold or exchanged for consideration other than eligible food items.

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 committed an IPV, so he is not subject to 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, there is no evidence that Respondent trafficked benefits, so Respondent does not owe the Department a debt.

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.
2. Respondent should not be disqualified from FAP.
3. Respondent does not owe the Department a debt for the value of FAP benefits trafficked.

IT IS SO ORDERED.

JK/nr



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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Wayne 17 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tara Roland 82-17
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Respondent

[REDACTED]
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[REDACTED], MI
[REDACTED]