



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 15, 2019
MAHS Docket No.: 18-013597
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 April 11, 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. Respondent received FAP benefits from the Department. The Department provided Respondent with an EBT card known as a "Bridge Card" to complete EBT transactions with his FAP benefits.

2. From December 17, 2016, through October 14, 2017, Respondent completed EBT transactions at [REDACTED] ([REDACTED] [REDACTED] Michigan.
3. [REDACTED] was a 6,000 square foot grocery store which was authorized by the Food and Nutrition Services (FNS) to accept EBT for eligible food items. [REDACTED] had shopping baskets and limited shopping carts available for its customers. [REDACTED] had three checkout registers and each had the ability to accept EBT. [REDACTED] had a well-stocked inventory of eligible food items.
4. The FNS investigated [REDACTED] for violations of the Supplemental Nutrition Assistance Program (SNAP) because it discovered that [REDACTED] had multiple transactions from individual benefit accounts in unusually short time frames and it had excessively large transaction amounts.
5. On December 29, 2017, the FNS notified [REDACTED] that it suspected the business of FAP trafficking from May 2017 through October 2017 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
6. On February 23, 2018, the FNS notified [REDACTED] that FNS had determined the store engaged in FAP trafficking and that it was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.
7. The Department investigated Respondent's EBT transactions at [REDACTED] and determined that he completed EBT transactions which were indicative of trafficking because they occurred in unusually short time frames and/or were excessively large.
8. The Department attempted to contact Respondent to obtain his explanation for the transactions the Department identified as trafficking, but the Department was unable to obtain an explanation from Respondent.
9. On December 6, 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.
10. 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 \$422.07 for the value of FAP benefits trafficked.

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 not met its burden. Respondent completed EBT transactions at [REDACTED] which was a retailer determined by FNS to have engaged in the trafficking of FAP benefits. [REDACTED] had a well-stocked inventory of eligible food items at the time it was inspected. Based on its inventory, a customer could have reasonably spent more than \$100 on eligible food items in a single transaction. The Department asserted that Respondent's transactions were indicative of trafficking based on the high dollar amount of each transaction and the fact that some occurred within short time frames. The Supermercado's inventory could have supported the high dollar amount of Respondent's transactions, and Respondent could have had multiple transactions in short time frames because he split his orders into more than one than one transaction. The Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent's transactions were for anything other than eligible food items for his household.

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, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP for an IPV.

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.

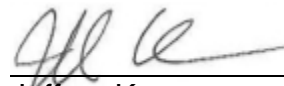
DECISION AND ORDER

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.

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

DHHS

LaClair Winbush
17455 Grand River
Detroit, MI
48227

Wayne 31 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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