



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 7, 2019
MOAHR Docket No.: 18-013833
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 May 1, 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 [REDACTED] [REDACTED] 2016, Respondent applied for assistance from the Department, including FAP benefits.
2. The Department issued FAP benefits to Respondent. The Department provided Respondent with an electronic benefit transfer (EBT) card to complete purchases with his FAP benefits.

3. On November 26, 2016, Respondent reported an EBT card lost and requested a replacement.
4. On February 5, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] [REDACTED] was used to complete the transactions. \$100.06 was charged to the EBT card.
5. On March 1, 2017, Respondent reported an EBT card lost and requested a replacement.
6. On March 28, 2017, Respondent reported an EBT card lost and requested a replacement.
7. On April 5, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] [REDACTED] was used to complete the transactions. \$105.97 was charged to the EBT card.
8. On May 5, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] [REDACTED] was used to complete the transactions. \$125.21 was charged to the EBT card.
9. On May 17, 2017, Respondent reported an EBT card lost and requested a replacement.
10. On June 5, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] [REDACTED] was used to complete the transactions. \$104.21 was charged to the EBT card.
11. On June 16, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] [REDACTED] was used to complete the transactions. \$84.28 was charged to the EBT card.
12. On October 3, 2017, Respondent reported an EBT card lost and requested a replacement.
13. On October 17, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] was used to complete the transactions. \$280.97 was charged to the EBT card.
14. On November 5, 2017, Respondent's EBT card was used to complete a transaction at [REDACTED] [REDACTED]. A membership card belonging to [REDACTED] was used to complete the transactions. \$203.84 was charged to the EBT card.
15. The Department investigated Respondent's case when it noticed that he had requested multiple replacement EBT cards within a short time frame.

16. The Department determined that Respondent was engaged in trafficking his FAP benefits by providing his FAP benefits to others to use. The Department identified the transactions at Sam's Club as indicative of trafficking.
17. The Department attempted to contact Respondent to obtain his explanation for the transactions, but the Department was unable to obtain Respondent's explanation.
18. On December 26, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department a debt for the value of the FAP benefits trafficked.
19. The Department requested Respondent be disqualified from FAP for 12 months for a first IPV, and the Department requested the establishment of a debt of \$955.26 for the value of benefits trafficked.
20. 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 (1) he requested multiple replacement EBT cards within a short time frame; (2) his EBT card was used to complete transactions at [REDACTED] [REDACTED] with memberships not belonging to him; and (3) balance inquiries were made from phone numbers associated with the names of the [REDACTED] [REDACTED] members whose memberships were used to complete transactions. 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.

The fact that Respondent requested multiple replacement EBT cards within a short time frame does not establish that Respondent was engaged in trafficking. Respondent was free to request as many as he needed. It is unknown why Respondent requested the replacement cards, and the Department did not identify a clear connection between the alleged trafficking transactions and the card replacements.

The Department focused on transactions at [REDACTED] [REDACTED] presumably because those transactions are associated with an identified member. The fact that Respondent completed EBT transactions with a membership not belonging to him does not establish that Respondent was engaged in trafficking. Respondent could have been present with the members when the purchases were made, or he could have authorized the members to buy eligible food items for him. Program benefits may be used by anyone the household selects. 7 CFR 274.7. Likewise, the fact that balance inquiries were made from those members does not establish that Respondent was engaged in trafficking, Respondent could have been present with the members and used their phones.

Even when taking all of 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 receiving FAP benefits.
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 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

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]