



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: May 10, 2019
MOAHR Docket No.: 19-000125
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on May 6, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 61 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-61.

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 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. Respondent was an ongoing recipient of FAP benefits starting in 2009. Exhibit A, p. 17.

2. Respondent filed with the Department an application for FAP benefits on [REDACTED], 2017. Exhibit A, pp. 11-12.
3. As part of the application process, Respondent was provided with and required to acknowledge understanding of the rights and responsibilities with respect to the FAP. Exhibit A, pp. 11-12.
4. The rights and responsibilities information included a pamphlet that advised Respondent that trading or selling FAP benefits was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program.
5. Respondent did not have any mental or physical impairment that would limit his understanding or ability to fulfill his obligations regarding her FAP benefits.
6. Respondent was approved for and received monthly FAP benefits from the Department during all times relevant to this matter. Exhibit A, pp. 15-16.
7. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named [REDACTED]. At the conclusion of the investigation, FNS issued to [REDACTED] a January 26, 2018, letter informing the store that it was permanently disqualified from FAP as a result of FNS' finding that the store had engaged in FAP trafficking. Exhibit A, pp. 23-42.
8. As a result of FNS' finding that HBM engaged in widespread FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at the stores.
9. From January 1, 2016, through January 31, 2018, Respondent made 28 purchases at [REDACTED]. Twenty of those transactions were flagged by the Department as fraudulent due to meeting the Department's criteria for trafficking at that particular store. Exhibit A, pp. 21-22.
10. On January 2, 2019, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in 20 fraudulent transactions at HBM from January 1, 2016, through January 31, 2018, totaling \$1,114.75. Exhibit A, pp. 1-9.
11. The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2016, through January 31, 2018. Exhibit A, pp. 1-9.
12. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,114.75. Exhibit A, pp. 1-9.
13. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9; 19-20.

14. Respondent did not appear at the hearing to rebut any of the Department's allegations.
15. The Notice of Hearing sent to Respondent's most recent address on file was not returned 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), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 to .3015.

The Department has alleged that twenty of Respondent's purchases at [REDACTED] during the alleged fraud period were instances of trafficking. The Department is seeking an order finding Respondent committed an IPV with respect to FAP and requiring Respondent to repay the amount allegedly trafficked.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720 (January 2016), p. 1; 7 CFR 273.16(c).

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. Trafficking includes not only the improper purchase or sale of FAP benefits, but also the attempt to purchase or sell FAP benefits for consideration other than eligible food. BAM 700 (January 2016), pp. 1-2; 7 CFR 271.2. An individual who offers to sell his or her benefits by either making an offer in a public way or posting an EBT card for sale online has committed an IPV. 7 CFR 274.7(b). The posting of an

EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in an IPV. 7 CFR 274.7(a).

An IPV requires that the Department establish its allegation by clear and convincing evidence. BAM 720, p. 1; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, Respondent is alleged to have engaged in twenty instances of unlawful trafficking of his FAP benefits at [REDACTED]. In support of that assertion, the Department proved that HBM was permanently disqualified from participation in the program by the federal FNS for engaging in unlawful trafficking of benefits at its store and that Respondent made twenty purchases at that store that were determined to have the hallmarks of fraudulent transactions. Namely, the Department flagged transactions made close in time to one another and transactions for at least \$23.85, which were considered suspicious given the nature and inventory of the store.

After reviewed the record, it is found that the Department met its burden of proving the allegations by clear and convincing evidence. Respondent regularly received his FAP allotment from the Department on the 9th of each month. On a regular basis, Respondent would also make a large purchase at [REDACTED] on the 9th of the month. [REDACTED]'s inventory and checkout system would not generally justify such purchases, although legitimate ones of that type may occur occasionally. However, the fact that Respondent regularly made those purchases on the very day he received his FAP allotment was sufficient to render those purchases suspicious. Respondent had other shopping options as well. Given that the store was proven to have engaged in fraudulent trafficking of FAP benefits and Respondent's purchase history fit the pattern of fraud, the Department has presented sufficient evidence to establish that Respondent engaged in the unlawful activity alleged. Respondent did not appear at the hearing to offer any explanation for his suspicious purchase pattern. Accordingly, the Department has met its burden of proof.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; 7 CFR 273.16(b). Clients are disqualified for 10 years for an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; 7 CFR 273.16(b). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, this was Respondent's first IPV with respect to FAP. Thus, Respondent is subject to a one-year disqualification.

Overissuance

For FAP benefits, the measure of an overissuance is the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2016), pp. 1-2; 7 CFR 273.18(c)(2). As stated above, the Department established that Respondent engaged in unlawful trafficking of FAP benefits that totaled \$1,114.75. Thus, the Department may recoup and/or collect that amount of an overissuance.

DECISION AND ORDER

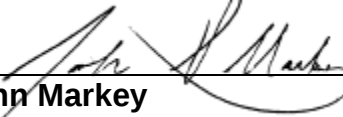
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to the Food Assistance Program.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of Food Assistance Program benefits totaling \$1,114.75.
3. Respondent is subject to a one-year disqualification from receiving Food Assistance Program benefits.

IT IS ORDERED that Respondent shall be disqualified from receiving Food Assistance Program benefits for a period of one year.

IT IS FURTHER ORDERED that the Department shall initiate collection and/or recoupment procedures for the amount of \$1,114.75, less any amounts already collected and/or recouped.

JM/cg



John Markey
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

Via Email:

MDHHS- Genesee-Union St.-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]