



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 20, 2019
MOAHR Docket No.: 19-001033
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 14, 2019, from Lansing, Michigan. Respondent personally appeared and testified.

The Department was represented by Darren Bondy, Regulation Agent of the Office of Inspector General (OIG). Mr. Bondy testified on behalf of the Department. The Department submitted 83 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

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 for 12 months?

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's OIG filed a hearing request on January 15, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to not traffic FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent testified during the hearing on May 14, 2019, that he had given his Food Assistance card to his children to use, and that the [REDACTED] [REDACTED] [REDACTED] [REDACTED] was just around the corner from where he lived. He stated that one of the clerks of the store told him that the owner instructed them to round up to the nearest ten dollars, which could be why his purchases ended in even cents. [Testimony of [REDACTED], May 14, 2019].
7. The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2017 through July 31, 2017 (fraud period).
8. As a result of an investigation by the Food and Nutrition Service (FNS), of the [REDACTED] [REDACTED] [REDACTED] [REDACTED] located in [REDACTED] Michigan, the FNS determined that based on transactions being over \$25.00, multiple transactions in unusually short time frames, excessively large purchase transactions and the unusual number of transactions ending in the same cents value, Respondent made 31 trafficking transactions. [Dept. Exh. 4-5, 48-73].
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,211.60 by trafficking his FAP benefits.
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (10/1/2017).

Intentional Program Violation

Suspected Intentional Program Violation means an overissuance 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. 7 CFR 271.2; BAM 720, p 1 (emphasis in original).

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1. An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p 1 (emphasis in original); see also 7 CFR 273(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 reported no physical or mental impairments that would limit Respondent's understanding or ability to fulfill his reporting responsibilities. As a result of an investigation by the Food and Nutrition Service of the ██████████ ██████████ ██████████ ██████████ located in ██████████ Michigan, the FNS determined that Respondent made 31 illegal transactions over \$25.00, based on his multiple transactions in usually short time frames, his excessively large purchase transactions and the unusual number of transactions ending in the same cents value.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(5); 7 CFR 273.16(b)(11); BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. 21 USC 862a; 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m); 7 CFR 273.11(c)(1); BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee only if there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

The amount for trafficking related IPV's is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.

- Documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence. BAM 720, p 8.

In the above-captioned case, the Department has shown that this is Respondent's first IPV.

Overissuance

A FAP recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10). When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

Here, the Department has established that Respondent was aware that misuse of his food benefits was a violation of state and federal laws for which he may be disqualified from the program, fined, put in prison, or all three and repayment of the food benefits.

Based on the evidence presented and the credible testimony of the Resident Agent, the Administrative Law Judge found the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter by trafficking his FAP benefits.

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 did receive an OI of FAP program benefits in the amount of \$1,211.60.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,211.60 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified for 12 months from receiving FAP benefits.

VLA/nr



Vicki L. Armstrong
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 Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Genesee Union St. County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tamara Morris
125 E. Union St 7th Floor
Flint, MI
48502

Respondent

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