



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 1, 2019
MOAHR Docket No.: 19-001547
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or State), 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 April 16, 2019, from Lansing, Michigan. The Department was represented by Maria Walters, Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

Department's Exhibit A pages 1-174 were admitted as evidence. The record closed at the conclusion of the hearing.

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 receiving Food Assistance Program (FAP) benefits for 12 months?
3. Did the Department establish an over issuance (OI) of FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on January 25, 2019, to establish an OI of benefits received by Respondent, as a result of Respondent having allegedly committed an IPV.
2. On March 18, 2018, contractors with the United States Department of Agriculture Food and Nutrition Service (FNS) completed a site visit to [REDACTED] [REDACTED] located at [REDACTED], [REDACTED], MI. [REDACTED] The store also goes by the name [REDACTED] which is listed on the signage on the front of the store. [REDACTED] has business hours of Sunday from 11 am-10 pm, Monday through Thursday from 10 am-11 pm, and Friday and Saturday from 10 am-12 am.
3. The USDA-FNS report indicated they had compiled evidence that [REDACTED] [REDACTED] had violated the SNAP regulations. Furthermore, the report cited that analysis of the records revealed EBT transactions that establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for the type of business being conducted by [REDACTED]
4. The USDA-FNS observed the following during the site inspection: the store had one checkout counter, two cash registers, one EBT point of sale device, night window/plastic barrier carousel style checkout windows, no optical scanners, no shopping carts, and no shopping baskets were located to assist customers shopping and transporting items to the register/vehicles.
5. There was no evidence of whole sale items available anywhere in the store such as posted prices or separate entrances. There was food stored out of public view in a 200 square foot area. There were no online/phone orders being taken, or delivery service available. The store did not have a kitchen or food prep area, and no deli area.
6. No (hot) food was sold on site, no meat bundles for sale, no seafood specials, and/or fruit and vegetable boxed bundles were for sale. The store sold snack items, pop, juice, chips, ice cream, candy, along with condiments, can and dry good items, some dairy products and packs of lunch meat and hot dogs. [REDACTED] [REDACTED] also sold alcohol, tobacco products, lottery tickets, automobile products, paper products, cleaning products, health and beauty products, and had an ATM or money transfer service at the store.
7. The USDA-FNS identified the threshold for single large amount purchases of \$24.79 or more, multiple transactions that were made from individual benefit accounts in set time frames, and excessively large transactions that were made

from individual benefits accounts as trafficked FAP benefits. The USDA-FNS also indicated that the store does not round transaction totals up or down at checkout, and that the store does not have an unusual price structure, such as ending most product prices with '.00' cents.

8. Respondent's shopping pattern at the [REDACTED] was unreasonable based upon on the inventory of the store as noted in the USDA's investigation, the high dollar transactions, the back to back transactions, even dollar amount transactions, and/or transactions made within a short time by the Respondent on a given day.
9. Respondent's EBT transaction pattern also reflected those of similar transaction patterns, as seen in other recipient cases who had admitted to trafficking their EBT card benefits at [REDACTED] Mr. [REDACTED] also showed as receiving a food merchandise return from the store in the amount of \$1.99 on July 19, 2017, however, Respondent did not make any EBT card purchases in July of 2017 at [REDACTED] and his last transaction prior to the return was on May 22, 2017. Respondent's shopping pattern at the [REDACTED] was unreasonable based upon on the inventory of the store as noted in the USDA's investigation, the high dollar transactions, the back to back transactions, even dollar amount transactions, and/or transactions made within a short time by Respondent on a given day.
10. Respondent reported no physical and/or mental impairments and has a 12th grade education level.
11. The eligibility summary shows Respondent did receive FAP benefits during the alleged fraud period.
12. Respondent did not appear to give evidence at the scheduled hearing to rebut the testimony presented by Petitioner or the evidence presented in the Hearing Summary and admitted exhibits.
13. Respondent is responsible for \$243.04 in unauthorized Food Assistance Program benefits from November 28, 2015, to December 26, 2016.
14. This was Respondent's first alleged IPV.
15. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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 January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP 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 (1/1/2016)(Emphasis added).

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 700, p 7 (1/1/2016); BAM 720, p 1 (1/1/2016).

A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the Food Stamp Act of 1977, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id.* DHHS policy BAM 700-Overissuance: The amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked).

FNS ruled on October 4, 2011, that "an individual who offers to sell their benefits by either making their offer in a public way or posting their EBT card for sale online has committed an IPV." Section 7(b) of the food stamp act and 7 CFR 274.7(a) clearly states posting your EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in an IPV. BAM 720. Intentional Program Violations states that "IPV is suspected for a client who is alleged to have trafficked FAP benefits". MCL 750.300a, BEM 203, 7 U.S.C. 2016 A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act of 1977, 7. U.S.C. 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. DHHS Policy BAM 700 defines Overissuance "For FAP benefits, an overissuance is also the amount of benefits trafficked, (stolen, traded bought or sold) or attempted to be trafficked".

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 2. Clients are disqualified for ten years for a 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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.

This was Respondent's first alleged instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

The unauthorized amount of FAP benefits is \$243.04 which appears to have been trafficked. Respondent did not appear at the hearing. The Department witness's testimony is unrebutted.

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 solicit for/receive an OI of FAP benefits in the amount of \$243.04.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$243.04 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 12 months beginning April 23, 2019.

LL/hb



Landis Lain
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

Keisha Koger-Roper
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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