



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 1, 2019
MOAHR Docket No.: 19-001556
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 [REDACTED] appeared and testified at the hearing.

State's Exhibit A pages 1-196 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 31, 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], 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 1 checkout counter, 2 cash registers, 1 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, canned 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. [REDACTED] was permanently disqualified from the SNAP program for trafficking as of May 22, 2018, by the United States Department of Agriculture. Furthermore, the Michigan Department of Health and Human Services determined that transactions from the store meet the same criteria as identified by the USDA – FNS during the fraud. At [REDACTED].
9. Respondent's FAP usage history (IG 311 and IG 312) were pulled and reviewed in conjunction to the fraud period, and the fraudulent transactions at the [REDACTED]. The report showed that the subject could purchase FAP approved items from other retailers in the [REDACTED] Detroit, and surrounding suburbs, and was not restricted to the [REDACTED] exclusively for FAP approved items.
10. Respondent's FAP usage history specific to the [REDACTED] (IG 312) indicated that the highest transaction took place on August 9, 2013, for \$92.75. Transactions at the [REDACTED] were identified by the USDA and/or met the criteria as trafficked FAP benefits.
11. 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, and/or transactions made within a short time by the subject on a given day.
12. Respondent also had same amount transactions that appeared consistently from 2013 through 2017 as well. This same pattern was observed by this Agent on other recipient cases including his wife's at this same store.
13. Respondent reported physical and/or mental impairments and has a 12th grade education level.
14. The eligibility summary shows Respondent did receive FAP benefits during the alleged fraud period.
15. Respondent is responsible for \$1,593.53 in unauthorized Food Assistance Program benefits from the months of March 14, 2013-April 4, 2017.
16. This was Respondent's first alleged IPV.
17. 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).

On December 19, 2018, Respondent's wife- [REDACTED] was interviewed by an Agent regarding her own case that involved the [REDACTED] for trafficking. She stated she and her husband- [REDACTED] have been separated for 4-5 years now, but they still talk and he comes around. She admitted that the subject was her FAP Authorized Representative on her FAP case until March 2018. [REDACTED] stated that her husband does not live with her and she did not know the his address. She was told that her husband's FAP Authorized Representative EBT card under her FAP case was used on one trafficked transaction at [REDACTED]. [REDACTED] was further told that her EBT card was used for all of the others transactions at [REDACTED] involving her case.

[REDACTED] stated that her husband- [REDACTED] is Iraqi and is friends with the owner of the store [REDACTED] who is also Iraqi. She stated her husband socializes with the owner. [REDACTED] stated her husband- [REDACTED] has also used her EBT card and pin number which she gave him to go to [REDACTED] for her when she was sick. She admitted that she did not know what her husband bought with her EBT card, and that the owner of the store let her buy non-food items such as bleach, tissue, toilet paper, pantie liners, toothpaste, toothbrushes, tampons, shampoo, and soaps and would charge double for the items when she went to the store. [REDACTED] stated she told her husband and he was supposed to talk to the owner about it. She stated; 'I had to pay bills'.

The unauthorized amount of FAP is \$1,593.53 which appears to have been trafficked.

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 \$1,593.53.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,593.53 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 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]