



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: July 8, 2019
MOAHR Docket No.: 19-002051
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 June 12, 2019, from Lansing, Michigan. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by himself. [REDACTED] [REDACTED] Petitioner's son, appeared and served as Arabic interpreter and also testified. Department Exhibit 1, pp. 1-133 was received and admitted.

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 benefits for one year?

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 submitted to the Department redetermination paperwork for FAP benefits. Respondent signed the application, thereby acknowledging that he had received, read, and agreed with the information in the assistance application Information Booklet, including the Important Things to Know

publication. That publication informed 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. Exhibit 1, pp. 72-77.

2. Respondent was approved for, received, and regularly used his FAP benefits. Exhibit 1, pp. 78-128.
3. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named [REDACTED] ([REDACTED]). At the conclusion of the investigation, FNS issued to [REDACTED] a March 22, 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. 12-16.
4. As a result of FNS' finding that [REDACTED] engaged in widespread FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at the store.
5. From September 17, 2016 through February 15, 2018, Respondent made 20 purchases at [REDACTED]. Ten of those 20 purchases were flagged by the Department as fraudulent due to meeting the Department's criteria for trafficking at that particular store. Exhibit 1, pp. 129-130.
6. On February 22, 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 10 fraudulent transactions at [REDACTED] from September 17, 2016, through February 15, 2018, totaling \$1,635.16. Exhibit 1, pp. 129-130.
7. The Department's OIG indicates that the time period it is considering the fraud period is September 17, 2016 through February 15, 2018. Exhibit 1, pp. 1-9.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,635.16. Exhibit 1, pp. 1-9.
9. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit 1, pp. 1-9.
10. The Notice of Hearing sent to Respondent's most recent address on file was not returned as undeliverable.
11. Respondent credibly testified that all purchases he made at [REDACTED] during the alleged fraud period were for food items.
12. [REDACTED] [REDACTED] credibly testified at hearing that he observed his father make purchases for food items from Samaha during the alleged fraud period.

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 29 of Respondent's suspicious 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

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2015), p. 1. Trafficking is defined as actually or attempting to buy, sell, or steal FAP benefits for cash or consideration other than eligible food. BAM 700 (October 2015), p. 2; 7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273(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, the Department has not met its burden. After an investigation, FNS determined that [REDACTED] engaged in wide-ranging fraud with respect to accepting and redeeming FAP benefits. The investigation showed that [REDACTED] had limited food inventory and no carts or baskets. The Department alleged that Respondent made 10 large and/or suspicious EBT transactions at the store from September 17, 2016 through February 15, 2018.

Respondent testified that he made bulk purchases of Yemeni tea, Yemeni coffee, herbs, dates, Yemeni sweets, flour, olive oil, cooking oil, and beans at the [REDACTED] market during the fraud period. Respondent pointed out photographs of those items in the Department exhibits. (Ex. 1, pp. 53-64) Respondent credibly testified that several of these items were only available at [REDACTED]. Respondent has a large family, so making bulk food purchases is understandable. Respondent testified that the owner of the market gave him a deal for some purchases and rounded down the purchase prices

because they were friendly, this explained some of the even dollar amount purchases. Respondent testified that his son was using the family vehicle to attend college courses and the [REDACTED] market was conveniently located next to the family mosque. None of Respondent's purchases from [REDACTED] were back to back purchases. Respondent's testimony that he purchased food from [REDACTED] during the fraud period was credible. [REDACTED] testimony that his father made food purchases from [REDACTED] during the fraud period was credible. Accordingly, the Department did not establish by clear and convincing evidence that Respondent engaged in unlawful FAP trafficking.

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, pp. 15-16; 7 CFR 273.16(b). In general, Clients are disqualified 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.

In this case, there was insufficient evidence that Respondent committed an IPV related to FAP benefits. Thus, no disqualification is warranted.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7 CFR 273.18. The OI amount for trafficking-related IPV's is the value of the trafficked benefits as determined by: (1) a court decision; (2) the individual's admission; or (3) 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. BAM 720, p. 8; 7 CFR 273.18(c)(2). In this case, the evidence did not establish that Respondent trafficked benefits therefore there is no overissuance.

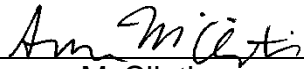
DECISION AND ORDER

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.

AM/nr



Aaron McClintic
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 55 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]
MI