



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: July 23, 2019
MOAHR Docket No.: 19-002676
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on July 18, 2019, from Lansing, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared and represented himself.

One exhibit was admitted into evidence during the hearing. An 81-page packet of documents was admitted collectively as the Department's Exhibit A.

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 the Food Assistance Program (FAP)?
3. Does Respondent owe the Department a debt for the value of FAP benefits trafficked?

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 received FAP benefits from the Department. The Department provided Respondent with an electronic benefit transfer (EBT) card known as a "Bridge Card" to complete EBT transactions with his FAP benefits.

2. From January 2016 through November 2017, Respondent used his EBT card exclusively at [REDACTED]. Respondent completed EBT transactions totaling \$3,260.02.
3. The [REDACTED] was a 1,500 square foot store which was authorized by the Food and Nutrition Services (FNS) to accept EBT for eligible food items. The [REDACTED] did not have any shopping carts or baskets. The [REDACTED] had a limited inventory of eligible food items and no optical scanners.
4. The FNS investigated the [REDACTED] for violations of the Supplemental Nutrition Assistance Program (SNAP) because it discovered that the [REDACTED] had multiple transactions from individual benefit accounts in unusually short time frames and it had excessively large transaction amounts.
5. On October 30, 2017, the FNS notified the [REDACTED] that it suspected the business of FAP trafficking from February 2017 through July 2017 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
6. On February 6, 2018, the FNS notified the [REDACTED] that FNS had determined the store engaged in FAP trafficking and that it was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.
7. The Department investigated Respondent's EBT transactions at the [REDACTED] and determined that he completed EBT transactions which were indicative of trafficking because they occurred in unusually short time frames and/or were excessively large.
8. The Department attempted to contact Respondent to obtain his explanation for the transactions the Department identified as trafficking, but the Department was unable to obtain an explanation from Respondent.
9. On March 4, 2019, the Department's OIG filed a hearing request to establish (a) that Respondent committed an IPV by trafficking FAP benefits and (b) that Respondent owes the Department a debt equal to the value of the FAP benefits he trafficked.
10. The OIG requested an order that (a) disqualifies Respondent from FAP for 12 months for a first IPV and (b) establishes that Respondent owes the Department a debt of \$3,067.37 for the value of FAP benefits trafficked.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Supplemental Nutrition Assistance Program (SNAP) is a federal created program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its food assistance program pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Intentional Program Violation

An intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card

numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(e)(6) and BAM 720, p. 1. 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, I find that the Department has met its burden. Respondent completed EBT transactions at the [REDACTED], which was a retailer known to engage in the trafficking of FAP benefits. Respondent completed EBT transactions at the [REDACTED] [REDACTED] which were excessively high considering the size of the store and its inventory of eligible food items. Some of the transactions also occurred within unusually short time frames. Respondent's transactions were consistent with an individual completing EBT transactions to obtain items other than eligible food items, and Respondent did not provide a legitimate explanation for his transactions.

Respondent testified that he either purchased items from the deli or that the retailer purchased groceries for him somewhere and then resold them to him. Respondent's explanation is not convincing. Respondent had previously explained to the Department during its investigation that he completed EBT transactions for items from the deli. Respondent did not mention that the retailer purchased groceries for him somewhere and then resold them to him. The fact that Respondent provided the explanation about his groceries for the first time at the hearing, and the fact that it would be unusual for any retailer to engage in such a practice, seems to show that Respondent is making up an excuse rather than providing a true explanation. Regarding the items from the deli, Respondent's EBT transactions were not consistent with a person buying items from a deli for personal consumption because the transactions were either excessive or too frequent.

The Department presented clear and convincing evidence that Respondent's EBT transactions at the Stardust Liquor Shoppe were for cash or consideration other than eligible food items, either directly, indirectly, in complicity or collusion with others, or acting alone. Therefore, Respondent's conduct meets the definition of trafficking in 7 CFR 271.2.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months

for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a 12-month disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, Respondent engaged in trafficking when he completed EBT transactions at the [REDACTED]. The Department presented sufficient evidence to establish that at least \$3,067.37 of Respondent's EBT transactions were related to trafficking. Thus, Respondent owes the Department \$3,067.37 because he trafficked FAP benefits valued at that amount.

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 should be disqualified from FAP.
3. Respondent owes the Department \$3,067.37 for the value of FAP benefits he trafficked.

IT IS ORDERED that the Department may initiate recoupment procedures to collect the \$3,067.37 debt Respondent owes the Department for the benefits he trafficked.

IT IS FURTHER ORDERED that Respondent shall be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

JK/hb



Jeffrey Kemm
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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Pam Assemany
220 Fort St.
Port Huron, MI 48060

St. Clair County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

[REDACTED]
[REDACTED], MI [REDACTED]