



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]

Date Mailed: August 9, 2019
MOAHR Docket No.: 19-003896
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 August 1, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented himself. Interpretation services were provided by [REDACTED]. During the hearing, 93 pages of documents were offered and admitted into evidence as Department's Exhibit A, pp. 1-93.

ISSUES

1. Did Respondent traffic 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) with respect to FAP?
3. Should Respondent be disqualified from receiving FAP benefits?

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], 2016, Respondent submitted to the Department a Redetermination form. Respondent signed the Redetermination, thereby acknowledging that he had received, read, and agreed with the information in the 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 A, pp. 70-77.

2. Respondent did not have a disability that would limit his understanding or ability to fulfill his obligations regarding his FAP benefits.
3. Respondent was approved for, received, and regularly used his FAP benefits. Exhibit A, pp. 78-90.
4. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named [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. 12-64.
5. 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 stores.
6. From August 16, 2016 through March 4, 2018, Respondent made 20 purchases at [REDACTED]. Seventeen 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 A, pp. 79-90.
7. On April 9, 2019, the Department's OIG filed a hearing request to establish a claim for repayment of benefits allegedly trafficked by Respondent as a result of Respondent having allegedly committed an IPV by engaging in 17 fraudulent transactions at [REDACTED] from August 16, 2016 through March 4, 2018, totaling \$2,883.79. Exhibit A, pp. 1-9; 79-90.
8. The Department's OIG indicates that the time period it is considering the fraud period is August 16, 2016 through March 4, 2018. Exhibit A, pp. 1-9.
9. The Department alleges that Respondent trafficked \$2,883.79 in FAP benefits. Exhibit A, pp. 1-9.
10. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9; 92-93.
11. Respondent appeared at the hearing and provided testimony regarding the FAP usage at issue in this case. Respondent's answers were inconsistent and generally lacking in credibility.

12. The Notice of Hearing sent to Respondent's most recent address on file was not returned 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.

The Department has alleged that 17 of Respondent's suspicious purchases at ██████████ 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 273.16(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 met its burden. After an investigation, FNS determined that ██████████ engaged in wide-ranging fraud with respect to accepting and redeeming FAP benefits. The investigation showed that ██████████ had limited food inventory and no carts or baskets. The Department established that Respondent made 17 large and/or suspiciously timed EBT transactions at the store from August 16, 2016 through March 4, 2018.

During the hearing, the Department presented Respondent's FAP usage history and issuance summary. After reviewing the overall purchase history, a very distinct pattern emerged. Each month during the fraud period with a few exceptions, Respondent would make large, back-to-back purchases at ██████████ and ██████████

(████████), which were two similar stores right down the street from one another. Each month, Respondent would receive his monthly FAP allotment and almost immediately make unreasonably large purchases at both locations within an impossibly short time period for legitimate purchases. By way of example, each month from July 2017 through October 2017, Respondent made one purchase of over \$200 at ██████████ then managed to go down the street and make another purchase for over \$100 at ██████████. The 17 suspicious purchases are for an excessive amount given the inventory of the store and the other shopping options available. The purchase pattern established is highly indicative of trafficking.

Respondent explained during the hearing that all of those purchases were legitimate and that he simply would call in his order to ██████████ while he was shopping at ██████████. Thus, per Respondent's explanation, when Respondent arrived at ██████████ all of his groceries were ready to go, and all he had to do was swipe his card and be on his way. Certainly, if Respondent was actually doing that, he would not be subject to any finding of fraud. However, when confronted with the Department's assertion that ██████████ did not take phone orders, Respondent abandoned that story and came up with a new one where he would go to ██████████, put in his order, then travel to ██████████ to shop. According to the revised version of Respondent's story, when he arrived back at ██████████ the order would be ready to go, and he would check out quickly. Given that Respondent completely changed his already incredible story immediately upon being challenged and came up with an even more incredible story, Respondent's testimony is wholly lacking in credibility and in no way serves to effectively rebut the Department's compelling evidence of fraud.

The evidence shows that Respondent engaged in a pattern of suspicious FAP purchases from a store that was proven to be engaged in fraudulent FAP trafficking during the same time. Respondent appeared at the hearing and provided a completely unbelievable explanation for his FAP transactions at ██████████. Accordingly, the evidence on the record established 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 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 one-year disqualification.

Repayment

The amount the Department is entitled to recoup and/or collect for trafficking-related IPV 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 shows that Respondent completed 17 transactions that qualified as trafficking. The total value of those 17 purchases was \$2,883.79. Thus, the Department may recoup and/or collect from Respondent \$2,883.79.

DECISION AND ORDER

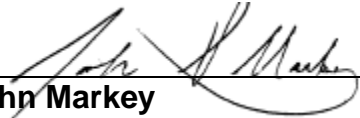
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department established by clear and convincing evidence that Respondent committed an IPV.
2. The Department is entitled to recoup and/or collect the total of \$2,883.79 as a result of Respondent's unlawful trafficking of that amount of FAP benefits.
3. Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$2,883.79, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of one year.

JM/cg



John Markey
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

Via Email:

MDHHS-Wayne-55-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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