



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: August 26, 2019
MOAHR Docket No.: 19-004381
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 August 20, 2019, from Lansing, Michigan.

The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG) standing in for Jennifer Allan.

Respondent personally appeared and testified unrepresented. [REDACTED] [REDACTED] appeared as an interpreter for Petitioner

The Department presented no witnesses.

Department Exhibit A.1-145 was admitted.

Respondent did submit any exhibits.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) or Supplemental Nutritional Assistance Program (SNAP) 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 FAP benefits for 12 months?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on April 19, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV in the amount of \$1,006.88 for the period from [REDACTED] 2016 through [REDACTED] 2017.
2. The OIG has requested that Respondent be disqualified from receiving program benefits for 12 months.
3. Respondent was a recipient of FAP benefits issued by the Department. Respondent's household consists of seven people.
4. Respondent was aware pursuant to her signature on the application that he could be prosecuted for fraud for trafficking. The Department testified that Respondent received a brochure with the bridge card which the Department did not include in the evidentiary packet.
5. The Department alleges that during the fraud period, Respondent used his bridge card at [REDACTED], of [REDACTED] Michigan. On [REDACTED] [REDACTED] 2017 the Food and Nutritional Service (FNS) investigated [REDACTED] finding excessively large transactions for a store of this this size, with an unusual amount of transactions ending in the same cents value (purchases ending in .99, exceeding \$9.99), and excessively large transactions greater than \$24.15. Federal data indicates that other stores of this size and zip code range from \$5-6 per swipe. An examination of the premises revealed small inventory, with dusty cans and small amounts of perishable items. At the time of the audit, the store had 2 units of the following: butter, milk and eggs. On [REDACTED] [REDACTED] 2017 FNS permanently disqualified [REDACTED] from the SNAP benefits program. Exhibit A.4.
6. The Department reviewed Respondent's purchases and discovered that he had multiple purchases exceeding \$24.15, the highest \$74.99. The FNS specifically targeted Respondent as completely large and unjustified purchases in their federal FNS report to the State of Michigan. Exhibit A.4.
7. The Department submitted 2017 transactions totaling approximately 252 transactions where the majority were swiped at multiple small specialty bakery's, small specialty fruit markets, and small neighborhood markets. Exhibit A.125-145. In 2017 Respondent charged \$10,967.94 in bridge card transactions. Exhibit A.144.

8. Respondent personally appeared and testified at the administrative hearing. Respondent did not have any receipts. Respondent could not recall if [REDACTED] [REDACTED] charged him separately cash for heating his food. Testimony of Respondent.
9. Respondent has not had a previous IPV.

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 October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuance 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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.

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; BAM 720.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (emphasis in original); see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

Federal regulations are found at 7 CFR 273.11(c), 273.16, 273.18, and 271.2.

In this case, this ALJ does not find that the credible and substantial evidence of record regarding the █████ █████ transactions only amount to clear and convincing evidence of food stamp fraud. However, the undersigned does find clear and convincing evidence of fraud as defined by the federal and state law rising to an IPV when taking into account the 252 total transactions, all at specialty small establishments for food for a family of 7, for the reasons set forth below.

It is well established that the SNAP is a Supplemental Nutritional Assistance Program for about 92% of recipients who are at or below the poverty line, to cover approximately 43-59% of the nutritional needs of its beneficiaries. That is, the FAP program is “supplemental” and only covers a little more than half of a person’s nutritional needs. In addition, eligibility requirements are such that 92% of individuals and families who qualify are at the poverty level income. The undersigned finds it incredible that a person would use a bridge card to meet the nutritional needs or supplement the nutritional needs of a family of seven by shopping at high end specialty groceries and bakeries. While the evidence does not indicate that the other establishments had their privileges revoked, Respondent’s patterns of shopping at Lion’s Pizza is reflected in the same

patterns of using the bridge card to high purchase as small shops that are specialty products with amounts that are tagged as suspect by the federal government.

Respondent did not have any receipts. Nor did Respondent have any specificity in accounting for his interactions with [REDACTED] [REDACTED] that would give account for the pattern's indicative of an IPV as defined under federal and state law.

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, BEM 708. 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. 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. 7 CFR 273.16.

In this case, clear and convincing evidence supports finding that evidence of record supports a finding that Respondent committed a first IPV of the FAP program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In this case, clear and convincing evidence of record shows that Respondent ineligibly received \$1,006.88 for the period from May 2016 through November 2017.

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 receive an OI of program benefits in the amount of \$1,006.88 from the FAP program for the period between May 2016 through November 2017.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1006.88 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of 12-months.

JS/nr



Janice Spodarek
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

Wayne 17 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tara Roland 82-17
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Detroit, MI
48228

Respondent

[REDACTED]
MI