



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 26, 2019
MOAHR Docket No.: 19-004401
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. Petitioner requested an interpreter. After over a half hour where the Department attempted unsuccessfully to secure an interpreter with [REDACTED] the Department's connection with [REDACTED] was discontinued and Respondent requested to go forward with the administrative hearing without an interpreter.

The Department presented no witnesses.

Department Exhibit A.1-103 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 18, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department. Respondent's household consists of nine people.
4. Respondent was aware pursuant to her signature on the application that she 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 the fraud period over a period of five and a half years, from [REDACTED] 2012 through [REDACTED] 2017, and that Respondent fraudulently charged \$2,271.16 in FAP benefits on her bridge card.
6. The Department alleges that during the five-and-a-half-year time period, Respondent ineligibly used her bridge card at [REDACTED] [REDACTED] and [REDACTED] [REDACTED] for food, mostly pizza, sandwiches and rice, for her family. The Department's investigation states that fraud was established based on "an unusual amount of transactions ending the same cents value (purchases ending in .99, exceeding \$9.99) and excessively largest transactions greater than \$24.15." Exhibit A.4.
7. Respondent used her card at [REDACTED] [REDACTED] during the five-and-a-half-year purported fraud period approximately 106 times. The Department tagged approximately 59 transactions out of 106 as suspect. Of the 59 transactions, four of these suspected IPV transactions ended in .99. Respondent's total transactions equaled \$3,155.82 making the average transaction \$29.76 with the average suspected transaction \$37.85. Suspected IPV transactions totaled \$2,271.16. The smallest suspect amount was \$25.13, and the largest \$54.73 approximately, with one transaction during the five years over this amount at \$73 on July 7, 2016. On that date Respondent was hospitalized with her pregnancy and her spouse used the card for a meal for the eight remaining members of the family. The next largest charge over the five years was for \$54.95.

8. Respondent presented evidence that the charge(s) for a 20-pound bags of rice was not excessively large compared to comparable prices for similar rice.
9. The Department presented evidence that in 2017 Respondent made bridge card transactions totaling \$15,914.82. Exhibit A.102. The Department did not present total transactions from 2012 to 2016. The individual who conducted the investigation and prepared the evidentiary packet was not at the administrative hearing. Comparing the total 2017 transaction of \$15,914.82 to the suspected IPV 2017 transactions, Respondent used her bridge card at [REDACTED] [REDACTED] for approximately \$674.00, or 4% of the total for that year.
10. Every time Respondent ordered hot food. Respondent paid a separate cash payment of \$2.00 to heat the item as such is not a permitted payment under the FAP program regulations.
11. On [REDACTED] [REDACTED] 2017 [REDACTED] [REDACTED] was investigated by the Federal SNAP program and disqualified [REDACTED] [REDACTED] from participating in the SNAP program for “an unusual amount of transactions ending in the same cents value (.99, exceeding \$9.99) and excessively large transactions greater than \$24.15).” Exhibit A.4. In [REDACTED] 2017 [REDACTED] [REDACTED] was permanently disqualified from participating the SNAP program.
12. As best that can be determined from the evidence presented by the Department, most of Respondent’s transactions, over 96 % were at grocery establishments.
13. Respondent has not had a previous IPV.
14. Respondent personally appeared and testified.

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 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 \$500.00 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, as noted, the individual who prepared the evidentiary packet was not available at the administrative hearing for testimony or cross-examination. The undersigned notes that total transactions include itemized transactions for 2017 alone, totaling \$15,914.82. Assuming 2017 to be an accurate average for FAP benefits for this family of nine, then over the five-and-a-half-year period examined here, Respondent would have received approximately \$88,000.00 in FAP benefits. The Department's evidence did look at Respondent's transactions for the 5.5 years at Lion's Pizza, which the Department alleges contains a total of \$2,271.16 or \$454.20 [REDACTED] [REDACTED]. This is approximately less than 3% per year.

The Department's allegations specifically target Respondent for having made suspected fraud transactions based on "an unusual amount of transactions ending the same cents value (purchases ending in .99, exceeding \$9.99) and excessively largest transactions greater than \$24.15." However, when examining Petitioner's actual charges that end in .99, out of the multiple transactions over five and a half years, the evidence shows that there are only 4 of 59 suspect transactions that end in the suspect amount. It does not take a statistician to note that this is not statistically significant, or even correlated. Such cannot reasonably be construed as clear and convincing evidence of welfare fraud.

As to the "high dollar" amounts targeted by the Department, Respondent rebutted the one large amount of \$73 which was swiped on [REDACTED] [REDACTED] 2016. On that date, Respondent was hospitalized. Respondent's spouse used the bridge card and charged for the eight members at home while she was in the hospital for food on that day. The next high amount was approximately \$54.00.

In addition, nine people is a large family. The undersigned does not find that clear and convincing evidence of FAP fraud occurred when a charge for pizza and/or sandwiches is for \$25.00 to \$54.00 average to feed a family of nine. This averages to \$2.77 to \$6.00 per meal per person, not unlike or even less than other fast food.

Respondent gave accounts that were specific (i.e. her hospitalization) and brought in comparable rice pricing (with receipts testified to at the administrative hearing).

Under these facts, and after a careful review of the credible and substantial evidence of the whole record over this five-and-a-half-year time period, the undersigned does not find that the record contains clear and convincing evidence of food stamp fraud. While this store may have been disqualified from participating with the SNAP program, not all and any individuals who transaction bridges cards at this establishment can be automatically found to have committed fraud due to the store's disqualification. And in this case, this ALJ does not find these facts to be credible evidence of welfare fraud under the clear and convincing burden of proof standard.

DECISION AND ORDER

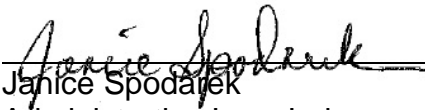
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 in the amount of \$2,271.16 from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action within 10 days of the date of this D&O.

IT IS SO ORDERED.

JS/nr



Janice Spodajek
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

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Respondent

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