



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: July 25, 2019
MOAHR Docket No.: 19-004408
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 July 23, 2019, from Lansing, Michigan.

The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich. Admin Code R 400.3130(5), Mich. Admin Code R 400.3178(5).

Department Exhibit A.101 was 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?

FINDINGS OF FACT

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

1. At all relevant times applicable to the issues herein, Respondent has been a beneficiary of the FAP/SNAP program. Evidence indicates that Petitioner has been a beneficiary since 2013 or earlier.
2. On [REDACTED], 2013, Respondent completed an application acknowledging that she understood her responsibilities for the bridge card use. Included in her acknowledgments was the receipt of the Petitioner's brochure titled "How to Use Your Bridge Card" which Respondent acknowledged that she understood that trafficking of benefits can result in prosecution for fraud, and that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash or nonfood items.
3. Respondent did not have any physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department. Respondent stated on her application that she was homeless and had 5 children ages 8 and under. Respondent further indicated that she was not disabled.
4. From [REDACTED] 2014, through [REDACTED] 2014, Respondent used her FAP benefits at [REDACTED] in [REDACTED] Michigan.
5. A USDA-FNS investigation of [REDACTED], in conjunction with the Michigan MSP Bridge Card Enforcement Team, and Homeland Security, conducted an undercover investigation where undercover transactions were made revealing the [REDACTED] engaged in SNAP trafficking. [REDACTED] is a small convenience store with a limited supply of staple food stock, one small rack of chips and cookies. No milk, bread or eggs were sold at the store. The investigation revealed questionable multiple transactions for large amounts over short time periods. Exhibit A.
6. A federal investigation reported to the State of Michigan revealed that Respondent made over 2 transactions on June 6, 2014, for over \$130; on August 5, 2014, 2 transactions 7 minutes apart for over \$285, and six transactions over \$100. Exhibit A.3.
7. FNS terminated [REDACTED] ability to participate in the SNAP program and [REDACTED] was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.
8. On April 18, 2019, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent because of Respondent having allegedly committed an IPV.

9. The Department considers the fraud period to be [REDACTED] 2014, to [REDACTED] 2014, totaling \$921.05.
10. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
11. Respondent failed to show for an interview with the OIG and failed to show for the administrative hearing.

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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 1, 2014), p. 1.

Trafficking is:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700 (May 1, 2014), p. 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)).

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, p 16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. A disqualified recipient remains a member of an active group if he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1. The OI amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) 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. This can be established through circumstantial evidence. BAM 720, p 8. That is, federal and state law allows for intent to be inferred based on the circumstances and actions.

In this case, I find that the Department has met its burden for the reasons set forth below.

A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions at the [REDACTED] as documented by the USDA Food and Nutrition Service, including an unusual high number of transactions for extra-ordinary amounts, totaling \$921.05 over 5 EBT transactions during short time periods. FNS also examined any multiple transactions made from individual benefit accounts in unusually short time frames along with excessively large recipient purchase transactions for a store of this size and inventory.

Here, the trafficking amount is \$921.05. Respondent is responsible for \$921.05 for the time period from [REDACTED] 2014, through [REDACTED] 2014, for ineligible use of FAP benefits trafficked at [REDACTED] of [REDACTED] Michigan.

As this was Respondent's first IPV, a 12-month disqualification is required. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] 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 over-issuances 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, pp 12-13 (January 1, 2016).

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 720, p 1; BAM 700, p 6.

Specific to social media trafficking, BAM 720 states in part:

**FAP
Trafficking**

The amount for trafficking related IPVs is the value of the trafficked benefits (attempted or actually trafficked) as determined by:

- The court decision.
- The individual's admission.
- 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. This can be established through circumstantial evidence. BAM 720, p 9.

See also federal regulation addressing trafficking at 7 CFR 273.18(c)(2).

In addition, on October 4, 2011, the USDA SNAP program office issued an FNS Social Media Memorandum stating in part:

The purpose of this memo is to transmit guidance regarding the sale of, or intent to sell, Supplemental Nutrition Assistance Program (SNAP) benefits and/or Electronic Benefit Transfer (EBT) cards in public or online through Web sites and social media such as Craig's List, Facebook, Twitter, eBay, etc. The Food and Nutrition Service (FNS) has reviewed this matter and considers the offer to sell SNAP benefits to be a violation of SNAP regulations, constituting an intentional Program violation (IPV). The legal basis that an individual who offers to sell their benefits by either making their offer in a public way or posting their EBT card for sale online has committed an IPV is contained in the following regulations and statutory provisions: • 7 CFR 273.16(c)(2) defines IPV to "consist of having intentionally committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device)." See Section 6(b) of the Food and Nutrition Act (the Act) for the statutory basis. • 7 CFR 273.16(e)(6) states that "the hearing authority shall base the determination of intentional Program violation on clear and

convincing evidence which demonstrates that the household member(s) committed, and intended to commit, Intentional Program Violation as defined in paragraph (c) of this section." • 7 CFR274.7(a) requires that SNAP benefits be used only by household members to purchase eligible food for the household: "Program benefits may be used only by the household, or other persons the household selects, to purchase food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits." See Section 7(b) of the Act for the statutory basis. Section 7(b) of the Act and 7 CFR274.7(a) lay out exactly how SNAP benefits must be used and that using SNAP benefits in any other way (e.g., posting your EBT card for sale online) would violate SNAP regulations and would constitute an IPV under 7 CFR 273.16(c)(2). The verbal offer of sale to another individual or the posting of an EBT card for sale online is evidence that the household member committed an IPV. Ex A.53-54.

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, p 1 (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.

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, p 15; 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, p 18.

The USDA has ruled that the sale of, or intent to sell or buy FAP benefits is a violation of the SNAP regulations and constitutes an IPV pursuant to 7 CFR 273.16 and 7 CFR 274.7(a), 7 CFR 274.7(a). On May 19, 2017, Respondent engaged in FAP trafficking as defined under federal and state law, and thus has committed an IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700. Here Agent Beck testified that the overissuance totals \$921.05 in FAP benefits for which the Department is entitled to collect.

Evidence indicates that this Respondent's first IPV. Thus, Respondent is to be sanctioned for 12 months in accordance with federal and state law.

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 solicit for/receive an OI of FAP benefits in the amount of \$921.05 for the period from [REDACTED] 2014, through [REDACTED] 2014.

The Department is ORDERED to initiate recoupment/collection procedures for \$921.05 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months in accordance with federal and state law.

JS/dh



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

DHHS

Montrece White
27690 Van Dyke
Warren, MI 48093

Macomb County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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