



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 27, 2019
MOAHR Docket No.: 19-004411
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 August 20, 2019, from Lansing, Michigan.

The Department was represented by Regulation Agent of the Office of Inspector General (OIG) Clarice Bridges.

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 1-114 was admitted.

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 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.
2. On [REDACTED] [REDACTED] 2015 Respondent completed a redetermination application acknowledging that she understood his 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." 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 his responsibilities to the Department.
4. From [REDACTED] 2016 to [REDACTED] 2017, Respondent used her FAP benefits at [REDACTED], [REDACTED] Michigan.
5. On December 20, 2017 the United States Department of Agriculture permanently revoked [REDACTED] license to conduct SNAP program EBT transactions due to trafficking pursuant to Section 271.2 of the SNAP regulations and as provided by Section 278.6(e)(1) of the SNAP Regulations. The USDA subsequently alerted the State of Michigan to investigate suspected fraud trafficking by individuals who made EBT transactions, including Respondent.
6. Evidence shows that Respondent made multiple EBT transactions during the fraud period examined from [REDACTED] 2016 through [REDACTED] 2017 showing numerous instances of multiple high dollar purchases in amounts of \$50.88 to \$174.98 that are excessive for a store of this size and type. These purchases were inconsistent with [REDACTED] infrastructure, and limited inventory of food items.
7. During the alleges fraud period, Respondent received \$7,680.00 in FAP benefits. The Department is requesting a finding that Respondent's transactions totaling \$2001.86 over the alleged fraud period were excessive, fraudulent and subject to repayment.
8. The USDA/FNS investigation resulted in an evidentiary file being forwarded to the State of Michigan for prosecution under the state FAP policy rules and in conjunction with federal regulations for overissuance and recoupment. Testimony of OIG witness.

9. On April 16, 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.
10. The OIG requested Respondent be disqualified from receiving program benefits for 12-months for a first IPV and repay the \$2001.86.
11. Respondent failed to appear for the administrative hearing which was held in her absence in accordance with federal and state law.

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)). Intent may be inferred by circumstantial evidence.

In this case, I find that the Department has met its burden. A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions at [REDACTED] [REDACTED] as documented by the USDA Food and Nutrition Service, including an unusual number of transactions that are excessively high for this type of establishment, and multiple transactions within minutes or seconds of one another. The multiple transactions made from individual benefit accounts in unusually short time frames or excessively large recipient purchase transactions for a store of this size and inventory.

The Petitioner does not need to prove explicit intent; it may be inferred with circumstantial evidence.

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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

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's 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. As such, Respondent's questions regarding explicitly established intent is not required.

Here, the trafficking amount is \$2001.86. Respondent is responsible for \$2001.86 for the time period from [REDACTED] 2016 to [REDACTED] 2017 for ineligible use of FAP benefits trafficked at [REDACTED] of [REDACTED] Michigan.

DECISION AND ORDER


This Administrative Law Judge based upon the above clear and convincing evidence of 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 traffic an OI of FAP benefits in the amount of \$2001.86.

The Department is ORDERED to initiate recoupment/collection procedures for \$2001.86 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/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

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Respondent

[REDACTED]
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[REDACTED]