



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: July 25, 2019
MOAHR Docket No.: 19-005483
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 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.79 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 he understood his responsibilities for the bridge card use. Included in his acknowledgments was the receipt of the Petitioner's brochure titled "How to Use Your Bridge Card", in which Respondent acknowledged that he 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 his understanding or ability to fulfill his responsibilities to the Department. Respondent stated on his application that he was homeless and had a Group Size of 1. Respondent further indicated that he was not disabled.
4. From July 7, 2014, to September 17, 2014, Respondent used his 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] engage 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 5 unusual transactions: approximately 2 minutes apart, on July 7, 2014, and on September 17, 2014, totaling \$417.42. 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 May 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.

9. The Department considers the fraud period to be July 7, 2014, to September 17, 2014, totaling \$417.42.
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 over 5 EBT transactions over \$417.42 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 \$417.42. Respondent is responsible for \$417.42 for the time period from July 7, 2014, through September 17, 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.

DECISION AND ORDER

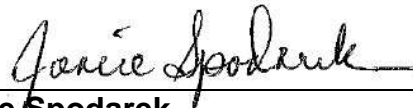
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 \$417.42 for the period from July 7, 2014, through September 17, 2014.

The Department is ORDERED to initiate recoupment/collection procedures for \$417.42 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]