



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: October 16, 2019
MOAHR Docket No.: 19-005708
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 24, 2019, from Lansing, Michigan. The Department was represented by Jenna McClellan, 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), or Mich Admin Code R 400.3178(5).

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 Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On an application for assistance dated [REDACTED] [REDACTED] 2015, Respondent acknowledged the duties and responsibilities of the Food Assistance Program (FAP). Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 32-61.

2. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2018, Respondent acknowledged the duties and responsibilities of the Food Assistance Program (FAP). Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 23-28.
3. [REDACTED] was a Food Assistance Program (FAP) recipient as a group of one effective August 16, 2010. Exhibit A, p 13.
4. Respondent was a member of the household of [REDACTED] until July 31, 2018, but did not receive benefits as part of that benefit group. Exhibit A, p 14.
5. [REDACTED] died on November 21, 2017. Exhibit A, p 12.
6. Respondent reported that her telephone number was [REDACTED] on her [REDACTED] [REDACTED] 2018, Redetermination form. Exhibit A, p 27.
7. The balance of [REDACTED]'s Food Assistance Program (FAP) benefits was accessed by telephone from the number [REDACTED] on several occasions. Exhibit A, p 22.
8. The Food Assistance Program (FAP) benefits of [REDACTED] were not closed as of her death but were used to make purchases totaling \$939.62 from December 15, 2017, through July 23, 2018. Exhibit A, pp 15-17.
9. No purchases were made using [REDACTED]'s Food Assistance Program (FAP) benefits between February 22, 2018, and March 14, 2018. Exhibit A, p 15.
10. Respondent was incarcerated in the Wayne County Jail from [REDACTED], 2018, through [REDACTED], 2018. Exhibit A, p 62.
11. The Department's OIG filed a hearing request on May 23, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
12. On May 23, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$939.62 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
13. This was Respondent's first established IPV.
14. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

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

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Federal regulations provide the following definition of intentional program violations:

Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

Respondent acknowledged her duties and responsibilities including the duty to use FAP benefits in a manner consistent with the Food and Nutrition Act of 2008 on an application for assistance dated [REDACTED] [REDACTED] 2015. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent again acknowledged the duties and responsibilities of receiving FAP benefits on a Redetermination (DHS-1010) form received by the Department on August 30, 2018.

Previously, Respondent was a member of the household of FAP recipient [REDACTED] but not a recipient on her benefit group. Respondent left that household on or around July 31, 2018. The circumstances of this case support a finding that Respondent had access to the FAP benefits card of [REDACTED] when she died on November 21, 2017. Department records indicate that the FAP balance was checked from Respondent's telephone number when there was no legitimate reason for her to check the balance of those benefits. Purchases totaling \$939.62 were made using the FAP benefits of [REDACTED] [REDACTED] from [REDACTED] [REDACTED] 2017, through [REDACTED] [REDACTED] 2018.

This Administrative Law Judge finds that Respondent used her access to [REDACTED]'s benefit card to make purchases for herself after [REDACTED] died. Respondent checked the balance of [REDACTED]'s FAP benefits using her own telephone number. During a period where Respondent was unable to use any FAP benefits because she was confined to the Wayne County Jail, no purchases were made using Ms. [REDACTED]'s FAP benefits.

Respondent had no authority to use the FAP benefits of [REDACTED] for herself. Any unauthorized using, transferring, or acquiring of those FAP benefits fits the definition of FAP trafficking. The trafficking of FAP benefits creates an overissuance in the amount of the unauthorized transfer.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise

facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Trafficking includes the buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes attempting to buy, sell, steal, or otherwise affect an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. BAM 700, p 2.

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996), p 381.

This Administrative Law Judge finds that the Department established by clear and convincing evidence that Respondent intentionally used the FAP benefits of [REDACTED] for herself in a manner other than authorized by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a, and that fits the Department's definition of benefit trafficking in Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 1-22.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV.


The Department has established an Intentional Program Violation (IPV).

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 Food Assistance Program (FAP) benefits in the amount of \$939.62.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$939.62 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/hb



Kevin Scully
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

DHHS

Susan Noel
26355 Michigan Ave
Inkster, MI 48141

Wayne County (District 19), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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