



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: September 9, 2019
MOAHR Docket No.: 19-005874
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on August 29, 2019, from Lansing, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

One exhibit was admitted into evidence during the hearing. A 111-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (FAP)?
3. Does Respondent owe the Department a debt for the value of FAP benefits trafficked?

FINDINGS OF FACT

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

1. Respondent received FAP benefits from the Department. The Department provided Respondent with an electronic benefit transfer (EBT) card known as a "Bridge Card" to purchase eligible food items with his FAP benefits.
2. Respondent used his FAP benefits to complete EBT transactions at [REDACTED] from March 2016 through January 2018. Respondent completed single transactions at [REDACTED] that were as large as \$299.94, and Respondent completed multiple transactions on the same day at [REDACTED] that totaled as much as \$303.00.
3. [REDACTED] was a liquor store located in Detroit that was authorized to accept EBT for eligible food items. [REDACTED] had approximately 2,500 square feet of space. [REDACTED] did not have any shopping carts or baskets, it had limited inventory of eligible food items, inventory of non-food items, and inventory of tobacco. [REDACTED] had a counter with a glass barrier to separate workers from customers.
4. The United States Food and Nutrition Service (FNS) conducted an investigation of [REDACTED]. The FNS discovered that [REDACTED] had multiple EBT transactions from individual benefit accounts in unusually short time frames and excessively large EBT purchase transactions.
5. On November 9, 2017, the Department visited [REDACTED] and discovered that its four most expensive eligible food items in stock were: [REDACTED] \$7.99, [REDACTED] \$5.99, jerky \$5.99, and pistachios \$5.49.
6. On December 20, 2017, the FNS notified [REDACTED] that it suspected the business of FAP trafficking from June 2017 through November 2017 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
7. On March 6, 2018, the FNS notified [REDACTED] that FNS had determined the store engaged in FAP trafficking and that it was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.
8. The Department investigated EBT transactions completed at [REDACTED]. The Department discovered that Respondent completed EBT transactions at Vaughn Liquor, and the Department determined that Respondent's EBT transactions were indicative of trafficking because they were excessively large.
9. The Department attempted to contact Respondent to obtain an explanation for his EBT transactions at [REDACTED]. Respondent did not appear for a scheduled interview or otherwise respond to the Department's attempt to obtain his explanation.

10. On May 31, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department for the value of FAP benefits he trafficked.
11. The OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV, and the OIG requested that Respondent be ordered to pay \$2,389.77 for the value of FAP benefits he trafficked.
12. A notice of hearing was mailed to Respondent at his last known address, and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

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

The Supplemental Nutrition Assistance Program (SNAP) is a federal food program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its food assistance program 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 intentional program violation (IPV) "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).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP 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;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP 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.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(e)(6) and BAM 720, p. 1. 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)).

In this case, I find that the Department has met its burden. Respondent completed EBT transactions at [REDACTED], which was a retailer known to engage in the trafficking of FAP benefits. Respondent completed EBT transactions at [REDACTED] which were excessively large considering the size of the store and its inventory of eligible food items. Respondent completed single transactions as large as \$299.94, and Respondent completed multiple transactions on the same day that totaled as much as \$303.00. The store type, store layout, and inventory of eligible food items would not typically support such large EBT transactions. Respondent's transactions were consistent with an individual completing EBT transactions to obtain items other than eligible food items, and Respondent did not provide a legitimate explanation for his transactions.

The Department presented clear and convincing evidence that Respondent's EBT transactions at Vaughn Liquor were for cash or consideration other than eligible food items, either directly, indirectly, in complicity or collusion with others, or acting alone. Therefore, Respondent's conduct meets the definition of trafficking in 7 CFR 271.2.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b).

Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a 12-month disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, Respondent engaged in trafficking when he completed EBT transactions at Vaughn Liquor to obtain cash or consideration other than eligible food items. The Department alleged that \$2,389.77 of Respondent's EBT transactions were related to trafficking. However, the Department did not present sufficient evidence to support the amount alleged. Rather, the Department's evidence established that only \$2,365.42 of Respondent's EBT transactions were related to trafficking. Thus, Respondent owes the Department \$2,365.42 because he trafficked FAP benefits valued at that amount.

DECISION AND ORDER

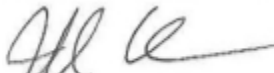
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from the Food Assistance Program (FAP).
3. Respondent owes the Department \$2,365.42 for the value of FAP benefits he trafficked.

IT IS ORDERED that the Department may initiate recoupment procedures to collect the \$2,365.42 debt Respondent owes the Department for the benefits he trafficked.

IT IS FURTHER ORDERED that Respondent shall be disqualified from the Food Assistance Program for a period of 12 months.

JK/nr



Jeffrey Kemm
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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
MI