



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: January 17, 2020
MOAHR Docket No.: 19-009669
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 15, 2020 from [REDACTED] Michigan. The Department was represented by Philip Giuliani, 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 the Department establish a claim for trafficked Food Assistance Program (FAP) benefits?
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 for FAP?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on August 29, 2019 seeking to disqualify Respondent from FAP and establish a claim for FAP benefits based upon an IPV by trafficking.

2. Respondent was a recipient of FAP benefits issued by the Department.
3. Respondent **was** aware of the responsibility not to buy, sell, trade, exchange, or otherwise traffic FAP benefits.
4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is November 2015 through May 2017 (fraud period).
6. The Department is seeking to establish a claim for trafficked FAP benefits in the amount of \$500.00.
7. This was Respondent's **first** alleged IPV.
8. A notice of hearing was mailed to Respondent at the last known address and **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), 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.

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 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 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 (October 2017), pp. 5, 12-13; ASM 165 (August 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 700 (October 2018), p. 8; BAM 720, p. 1.

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

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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.

In this case, the Department alleges that Respondent committed an IPV of FAP because she trafficked \$500.00 of FAP benefits at [REDACTED] (Store), a convenience store. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (October 2015), p. 3. The federal regulations define trafficking to include "attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 CFR 271.2. In this case, the Department established that it adequately notified Respondent at the time of Application and when she received the EBT card that she could not traffic FAP benefits.

The Department presented evidence that after an investigation by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), Michigan State Police, and the Michigan Department of Agriculture & Rural Development, Store was found to have unclean and unsafe conditions. Furthermore, Store was not conducive to completing any real grocery purchases because it lacked inventory, baskets, carts, optical scanners, and sufficient counter space to complete transactions due to the plastic barrier between the customer and Store clerk. Pictures from Store also show that of the inventory available, a substantial portion of it was expired or sitting in or near rat feces. Furthermore, during the investigation a live rat was captured in Store. The photos also show that inventory that was not in or near rat feces had dust accumulating on top of it, evidencing a low turnover of any inventory available. It was also noted that many of the shelves in Store were empty. A Michigan State Police report confirms that a sting operation was completed wherein Store purchased \$370.00 in FAP benefits from cooperating witnesses in exchange for cash, cigarettes, alcohol, and other non-FAP eligible items. Given Store's condition, it could not support large-dollar-value transactions or transactions in quick succession and was likely trafficking benefits on a regular basis. However, to support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at Store.

Upon review of Respondent's IG-312 and IG-311 EBT history from Store, Respondent often completed transactions for large-dollar values. For example, on November 12, 2015, Respondent completed a transaction at 4:29 PM for \$45.99. The next day she spent \$86.10 at Walmart and then the day after that spent \$20.50 at Kroger. Both Walmart and Kroger have greater selections of food, of better quality, with better prices, in a healthy and clean environment. On December 11, 2015, Respondent spent \$39.99 at 6:48 PM but on the same day went to Dollar Tree and Dollar Store spending \$22.06 total between the two stores and \$52.25 at [REDACTED] the next day. Again, all three stores have a greater selection with better quality and prices than that of Store. On June 28, 2016, Respondent completed a transaction for \$79.99 at 7:33 PM. However, in the week prior, Respondent went to Meijer and spent \$49.00 in addition to

Walmart on two occasions spending \$105.91 total. Given Respondent's ability to visit traditional large grocery retailers multiple times in the same week, there is no legitimate reason for Respondent to spend almost \$80.00 in Store with little inventory that was not covered in feces, dust, or expired. Reviewing the remainder of Respondent's transaction history shows a continuing pattern through May of 2017. Given Store's lack of baskets, shopping carts, optical scanners, inventory, and limited counter space, these transactions were not legitimate food purchases but instead trafficked benefits. The review of Respondent's FAP transaction history, coupled with the USDA's finding that Store trafficked FAP benefits, was sufficient when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked FAP benefits at Store.

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. Clients are disqualified for 10 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; 7 CFR 273.16(b)(1) and (5). A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

Recoupment or Collections

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup that amount. BAM 700, p. 1; 7 CFR 273.18(c)(2). The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8; 7 CFR 273.18(c)(2).

In this case, the Department alleged that Respondent trafficked \$500.00 in FAP benefits from November 2015 through May 2017. A review of the Respondent's IG-312 EBT History presented by the Department supports FAP trafficking in the amount alleged. The Department is entitled to recoup \$500.00 from Respondent, the amount of trafficked FAP benefits.

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. The Department **has** established a claim for trafficked FAP benefits in the amount of \$500.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$500.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



AMTM/jaf

Amanda M. T. Marler
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

(via electronic mail)

Jeanette Cowens

MDHHS-[REDACTED]-Hearings

L Bengel

Policy Recoupment

Petitioner

(via electronic mail)

MDHHS-OIG-Hearings

Respondent

(via first class mail)

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]