



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: February 6, 2020
MOAHR Docket No.: 19-011042
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 7 CFR 273.16. After due notice, a telephone hearing was held on February 5, 2020, from Lansing, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent, [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 99-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 benefits transfer (EBT) card known as a "Bridge Card" to complete EBT transactions with his FAP benefits. When the Department provided the Bridge Card to Respondent, the Department provided

Respondent with a pamphlet which advised Respondent that it was illegal to use his FAP benefits for anything other than eligible food items for his household.

2. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
3. From September 2015 through September 2017, Respondent completed EBT transactions at Citgo (AKA Oz Petroleum), 14822 E Warren Ave, Detroit, Michigan.
4. The Citgo was a 400 square foot gas station which was authorized by the Food and Nutrition Services (FNS) to accept EBT for eligible food items. The Citgo did not have any shopping carts or baskets. The Citgo had a limited inventory of eligible food items, no optical scanners, and a protective barrier for the staff at the register.
5. The FNS investigated the Citgo for violations of the Supplemental Nutrition Assistance Program (SNAP) because it discovered that the Citgo had multiple transactions from individual benefit accounts in unusually short time frames and it had excessively large transaction amounts.
6. On July 5, 2017, the FNS notified the Citgo that it suspected the business of FAP trafficking from December 2016 through May 2017 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
7. On September 6, 2017, the FNS notified the Citgo 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 the Citgo, including Respondent's EBT transactions. The Department determined that Respondent completed EBT transactions which were indicative of trafficking because they occurred in unusually short time frames and/or were excessively large.
9. The Department attempted to contact Respondent to obtain his explanation for the transactions the Department identified as trafficking. When the Department contacted Respondent, Respondent advised the Department that he completed the transactions. Respondent explained that the store gave him credit and he paid up with his FAP benefits on or about the fifth of each month. Respondent also asserted that he only shopped at the Citgo because it was convenient since he did not have a vehicle.
10. The Department further investigated Respondent's transactions and determined that Respondent did have many EBT transactions on or about the fifth of each month. The Department also determined that Respondent shopped at many retailers other than the Citgo, including major grocery retailers on the same day he completed EBT transactions at the Citgo. The Department identified transactions

totaling \$2,034.90, which were indicative of trafficking because they were either in excess of \$24.89 or completed in unusually short time periods and totaling more than \$24.89.

11. On October 9, 2019, the Department's OIG filed a hearing request to establish (a) that Respondent committed an IPV by trafficking FAP benefits and (b) that Respondent owes the Department a debt equal to the value of the FAP benefits he trafficked.
12. The OIG requested an order that (a) disqualifies Respondent from FAP for 12 months for a first IPV and (b) establishes that Respondent owes the Department a debt of \$2,034.90 for the value of FAP benefits trafficked.
13. 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 created 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 the Citgo, which was a retailer known to engage in the trafficking of FAP benefits. Respondent completed EBT transactions at the Citgo which were excessively high considering the size of the store and its inventory of eligible food items. Some of the transactions also occurred within unusually short time frames. 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 the Citgo 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 the Citgo. The Department presented sufficient evidence to establish that at least \$2,034.90 of Respondent's EBT transactions were related to trafficking. Thus, Respondent owes the Department \$2,034.90 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 FAP for 12 months.
3. Respondent owes the Department \$2,034.90 for the value of FAP benefits he trafficked.

IT IS SO ORDERED.

JK/ml



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

Wayne (District 76) County DHHS – Via Electronic Mail

MDHHS Recoupment – Via Electronic Mail

L. Bengel – Via Electronic Mail

Petitioner

OIG – Via Electronic Mail

Respondent

[REDACTED]
MI