



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]
Date Mailed: February 4, 2020
MOAHR Docket No.: 19-012238
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 30, 2020 from Detroit, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, a 63-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-63.

ISSUES

1. Did Respondent traffic 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 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. The Department's OIG filed a hearing request on [REDACTED], 2019 to establish it is entitled to recoup/collect benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to use his FAP benefits for lawful purposes.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is November 11, 2014 through September 9, 2017 (fraud period).
7. During the fraud period, the Department alleges that Respondent trafficked [REDACTED] in FAP benefits.
8. The Department alleges it is entitled to recoup/collect FAP benefits in the amount of \$[REDACTED] from Respondent.
9. This was Respondent's second alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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 overissuances 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. 12-13

Intentional Program Violation

Suspected IPV means an overissuance 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. 7; 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 or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or

eligibility or trafficked their benefits. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273.16(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 by trafficking his FAP benefits at [REDACTED], located at [REDACTED], [REDACTED], MI 48238 (Store). Additionally, the Department contends that Respondent allowed Store's owner to improperly utilize his FAP benefit card. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p 2. 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 support of its contention that Respondent committed an IPV, the Department presented investigative materials compiled by the Department and the United States Department of Agriculture (USDA) OIG's office. The documents show that there were reports from customers that Store was allowing individuals to exchange their FAP benefits for cash and other forms of consideration, including cigarettes. The USDA completed a search warrant at Store and discovered multiple FAP benefit cards at the location. The Department presented photographs of the FAP benefit cards located at Store, one of which was Respondent's. Upon further investigation, the USDA OIG discovered that Store's owner utilized individual FAP benefit cards to shop at [REDACTED] and [REDACTED] in the [REDACTED] Michigan and [REDACTED] Michigan areas to purchase items for resale at Store.

The Department presented photographs of the FAP benefit cards that were seized at Store. One of the cards had Respondent's name located on the front of the card. Additionally, the Department presented Respondent's Electronic Payment Processing Information Control (EPPIC) report showing that the card number listed on the FAP benefit card was associated with Respondent's FAP benefit account. The Department presented a FAP transaction history for Respondent showing his FAP purchases by date, time, and amount.

Additionally, the Department presented a FAP transaction history for Respondent showing his FAP purchases at Store by date, time, and amount. Respondent's FAP transaction history at Store showed a multitude of transactions over [REDACTED] typically occurring within days of receiving his monthly FAP allotment.

The Department testified that the high-priced transactions were not supported by Store's size inventory. The evidence showed that Store was a small convenience store with a limited inventory. Store had few shopping carts and a bulletproof glass turnstile

that only allowed a limited number of items to be purchased at one time. Store also had numerous expired items on the shelves, suggesting inventory turnover was low. Store's size and inventory made Respondent's high expense FAP purchases unlikely to be legitimate food purchases.

The highly unusual nature of Respondent's transactions at Store alone is indicative of trafficking. It is not reasonable that Respondent would make such high-priced transactions at Store, considering Store's inventory and size. It is also significant that Respondent's FAP benefit card was located at Store and that his purchase history is consistent with that of the trafficking discovered in the USDA OIG investigation. Thus, the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits and, therefore, committed an IPV.

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, pp. 15-16; 7 CFR 273.16(b). In general, Clients are disqualified 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.

In this case, Respondent was previously found to have committed an IPV related to FAP benefits in MOAHR Docket No. 17-008036. Thus, this is Respondent's second IPV related to FAP benefits. Therefore, Respondent is subject to a two-year disqualification.

Repayment

The amount the Department is entitled to recoup and/or collect for trafficking-related IPV is the value of the trafficked benefits 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; 7 CFR 273.18(c)(2). In this case, the evidence shows that Respondent completed 29 transactions that qualified as trafficking. The total value of those 29 purchases was [REDACTED]. Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED].

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 with respect to FAP.

2. The Department is entitled to recoup and/or collect the total of [REDACTED] as a result of Respondent's unlawful trafficking of that amount of FAP benefits.
3. Respondent shall be disqualified from receiving FAP benefits for a period of two years.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of [REDACTED] less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of two years.

JM/tm



John Markey

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

Keisha Koger-Roper
12140 Joseph Campau
Hamtramck, MI
48212

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel