



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 17, 2020
MOAHR Docket No.: 19-012722
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 14, 2020, from Lansing, Michigan. The Department was represented by Regulation Agent of the Office of Inspector General (OIG), Jennifer Allen.

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).

Department Exhibit A.91 was offered and admitted into the record.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) or Supplemental Nutritional Assistance Program (SNAP) 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 for 12 months?

FINDINGS OF FACT

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

1. At all relevant times, Respondent has been a beneficiary of the FAP/SNAP program. As of the day of the administrative hearing, Respondent is receiving FAP benefits at his address of record. A notice of hearing was mailed to Respondent at his current address and was not returned by the United States Postal Service as undeliverable
2. Respondent completed multiple applications and redeterminations acknowledging that he understood her responsibilities for the bridge card use. Included in his acknowledgments was the receipt of the Petitioner's brochure titled "How to Use Your Bridge Card." Respondent acknowledged that he understood that trafficking of benefits can result in prosecution for fraud and that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash or nonfood items. See Exhibit A.
3. Respondent did not have any physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
4. From August 2016 through November 2016, Respondent used his FAP benefits at [REDACTED] of [REDACTED] Michigan.
5. On January 31, 2017, the USDA/United States Food and Nutrition Service (FNS) SNAP program permanently disqualified [REDACTED] from the SNAP program for FAP trafficking. The audit determined that the store had one optical scanner and register with EBT device and did not possess any shopping baskets or carts for customers. There were no wholesale items, hot or prepared food, or deli and cheese sold by the pound at the store. The Store is approximately 1100 square foot. Photos taken show small quantiles of food stored and expired items with low turnover on the shelves. No fresh fruits or vegetable were sold. The FNS determined that any FAP transactions above \$24.09 were suspicious as a base threshold for fraud.
6. Respondent had access to other box grocery stores in his area and was not restricted to shop at the gas station for his nutritional needs.
7. Respondent used his bridge card at [REDACTED] for multiple purchases exceeding \$24.09, one on October 7, 2016, in the amount of \$182.56.
8. The USDA/FNS investigation resulted in an evidentiary file being forwarded to the State of Michigan for investigation and prosecution under the state FAP policy rules and in conjunction with federal regulations for overissuance and recoupment. (Testimony of OIG witness.)

9. During the alleged fraud period, Respondent made EBT transactions which equaled or exceeded the threshold, totaling \$512.94.
10. On November 27, 2019, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent because of Respondent having allegedly committed an IPV.
11. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 1, 2014), p. 1.

Trafficking is:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700 (May 1, 2014), p. 2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273.16. 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)). Intent may be inferred by circumstantial evidence.

Regarding the running of a tab, the DHHS pamphlet lays out acceptable uses to which all applicants and those who acknowledged at redetermination that they have been appraised of the program rules and uses of the bridge card. The federal regulation regarding a tab prohibition is found at 7 CFR 274.7.

In this case, Respondent failed to appear at the administrative hearing. No return mail was issued to the Department or to the hearing's office. As of the date of the administrative hearing, Respondent is active FAP benefits at his address of record and to which the Notice of Hearing was issued. Under federal and state law, a substantive review is allowed and thus, jurisdiction is proper.

Here, clear and convincing evidence supports finding that Respondent's EBT charges met the definition of an IPV under federal and state law having met repeated charges at or above the minimum threshold of \$24.09. This gas station store was removed from the FAP program, and the federal government tagged Respondent as having engaged in transactions which met the threshold of \$24.09.

After a careful review of the credible and substantial evidence of the whole record, and the testimony at the administrative hearing, I find that the Department has met its burden of proof. A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions at [REDACTED] documented by the USDA Food and Nutrition Service, including an unusual number of transactions in extra-ordinary large amounts for a size and store with this inventory. Respondent did not appear at the administrative hearing and thus, did not rebut the Department's proofs.

The Petitioner does not need to prove explicit intent; it may be inferred with circumstantial evidence.

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. 16. Clients are disqualified for ten 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. A disqualified recipient remains a member of an active group if he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The OI amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) 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. This can be established through circumstantial evidence. BAM 720, p. 8. As such, Respondent's questions regarding explicitly established intent is not required.

Here, the trafficking amount is \$512.94. Respondent is responsible for \$512.94 for the time period from August 2016 through November 2016, for ineligible use of FAP benefits trafficked at [REDACTED]

DECISION AND ORDER

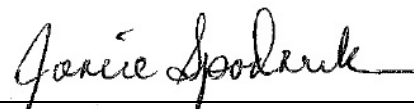
This Administrative Law Judge based upon the above clear and convincing evidence of the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did solicit for/receive an OI of FAP benefits in the amount of \$512.94.

The Department is ORDERED to initiate recoupment/collection procedures for \$512.94 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months in accordance with federal and state law.

JS/ml



Janice Spodarek
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

Courtney Jenkins
22 Center Street
Ypsilanti, MI 48198

Washtenaw (District 20) County DHHS –
Via Electronic Mail

Recoupment – Via Electronic Mail

L. Bengel – Via Electronic Mail

Petitioner

OIG – Via Electronic Mail
P.O. Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED] – Via First Class Mail
[REDACTED] MI [REDACTED]