



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 31, 2020
MOAHR Docket No.: 19-012963
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 23, 2020 from [REDACTED] Michigan. The Department was represented by Craig Baylis, 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 November 7, 2019 seeking to disqualify Respondent from FAP due to unauthorized use/trafficking of her FAP benefits.

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, transfer, or otherwise traffic her 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 incident leading to the allegation of fraud took place on October 13, 2019 (fraud period).
6. During the alleged fraudulent transaction, three men completed a single transaction using \$192.00 of Respondent's food benefits at Meijer at approximately 4:00 AM.
7. The Department is seeking to establish a claim for trafficked FAP benefits in the amount of \$192.00.
8. This was Respondent's **first** alleged IPV.
9. 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 trafficked her FAP benefits by allowing the unauthorized use of her Electronic Benefit Transfer (EBT) card by three men not associated with her FAP group. Trafficking is the buying or selling, attempting to buy or sell, or other effecting of an exchange of FAP benefits for cash or consideration other than eligible food either directly, indirectly, in complicity or collusion with others, or acting alone. BAM 700, p. 2; 7 CFR 271.2. In this case, the Department established that it adequately notified Respondent at the time of her application interview in January 2019 of her rights and responsibilities as a program recipient.

The Department became aware of the alleged fraud in this case due to an anonymous tip to the fraud hot line indicating that Respondent was selling her FAP benefits to customers at local retailers. Based upon the tip, the Department began a review of Respondent's transaction history looking for any irregularities in her pattern of spending. On October 13, 2019, the Department noted that Respondent's EBT card was used to complete a single transaction equal to her monthly FAP allotment at Meijer at approximately 4:00 AM. Respondent did not have any other transactions in her EBT history completed around the same time of day, nor did she ever spend the full value of her FAP benefit in any transaction in the 10 months immediately preceding the transaction despite regular shopping trips to Kroger, Meijer, Sam's Club, and other retailers.

After reviewing Respondent's EBT history, the Department contacted Meijer to obtain information about the transaction in question. Meijer provided the receipt for the transaction showing that \$192.00 in FAP benefits was used in addition to \$10.04 on a debit card associated with a person by the name of Lakendric Willis. According to Department records, Respondent does not have an authorized representative to use her card nor is there anyone in the household by that name. In addition, Meijer provided security footage from the transaction showing three men. The first man appears to be just observing the transaction. The second man swipes the EBT card and completes the transaction. The third man loads the conveyor belt with groceries, gives the second man a hug, does something on his phone, and then goes back to the cashier to swipe the debit card. After the transaction is complete, the first and second man leave together and the third man leaves separately. It is notable that Respondent identifies herself as female on her Application for benefits and her Secretary of State Identification Photo pictures a woman who looks drastically different than the three individuals seen in the Meijer surveillance photos. It is also notable that Respondent did not inform the Department that her card had been lost or stolen within the three months following the suspicious transaction at Meijer.

As discussed above, the purchase, sale, or exchange of an EBT card for cash or consideration is considered trafficking of FAP benefits. Trafficking is a form of an IPV. Given that the Department became aware of this incident after receiving a tip that

Respondent was selling her benefits, that she was clearly not present at the time of the transaction, that there were no authorized users or group members for her FAP group, and the odd hour and value of the transaction, the Department has met its burden of proof by clear and convincing evidence that Respondent trafficked her FAP benefits. Respondent has 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, 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 \$192.00 in FAP benefits on October 13, 2019. A review of the Respondent's IG-311 EBT History presented by the Department supports FAP trafficking in the amount alleged. The Department is entitled to recoup \$192.00 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 \$192.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$192.00 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

Amber Gibson
MDHHS-██████ Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

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