



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: February 13, 2020
MOAHR Docket No.: 19-013286
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on February 10, 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 91-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-91.

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) with respect to FAP?
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. Respondent filed with the Department an application for FAP benefits on ██████████, 2014. Exhibit A, pp. 57-81.

2. As part of the application process, Respondent was provided with and required to acknowledge understanding of the rights and responsibilities with respect to the FAP. Exhibit A, p. 76.
3. The rights and responsibilities information included a pamphlet that advised Respondent that trading or selling FAP benefits was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, p. 76.
4. Respondent did not have a mental or physical impairment that would limit his understanding or ability to fulfill his obligations regarding his FAP benefits. Exhibit A, p. 67.
5. Respondent was approved for and received monthly FAP benefits from the Department during all times relevant to this matter. Exhibit A, pp. 82-85.
6. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named [REDACTED]. At the conclusion of the investigation, FNS issued to [REDACTED] an October 25, 2018 letter informing the store that it was permanently disqualified from FAP as a result of FNS' finding that the store had engaged in FAP trafficking. Exhibit A, pp. 6-37.
7. As a result of FNS' finding that [REDACTED] engaged in widespread FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at the stores.
8. From January 28, 2017 through October 17, 2018, Respondent made 165 purchases at [REDACTED]. Fifty-one of those 165 purchases were flagged by the Department as fraudulent due to meeting the Department's criteria for trafficking at that particular store. Exhibit A, pp. 38-48.
9. On [REDACTED] 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV by engaging in 51 fraudulent transactions at [REDACTED] from January 28, 2017 through October 17, 2018, totaling \$[REDACTED]. The Department seeks an order requiring Respondent to repay the amount allegedly trafficked. Exhibit A, pp. 1-4; 38-48.
10. The Department's OIG indicates that the time period it is considering the fraud period is January 28, 2017 through October 17, 2018. Exhibit A, pp. 1-4.
11. The Department alleges that Respondent trafficking in FAP benefits in the amount of \$[REDACTED] Exhibit A, pp. 1-4.
12. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-4.

13. Respondent did not appear at the hearing to rebut any of the Department's allegations.
14. The Notice of Hearing sent to Respondent's most recent address on file was not returned 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.

The Department has alleged that 51 of Respondent's suspicious purchases at [REDACTED] from January 28, 2017 through October 17, 2018 were instances of trafficking. The Department is seeking an order finding Respondent committed an IPV with respect to FAP and requiring Respondent to repay the amount allegedly trafficked.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (May 2014), p. 2. Trafficking is defined as actually or attempting to buy, sell, or steal FAP benefits for cash or consideration other than eligible food. BAM 700 (May 2014), p. 2; 7 CFR 271.2.

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(e)(6). 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, the Department has met its burden. After an investigation, FNS determined that [REDACTED] engaged in wide-ranging fraud with respect to accepting and redeeming FAP benefits. The investigation showed that [REDACTED] had limited food inventory, no carts, and operated out of a night window or plastic barrier. The Department established that Respondent made 51 suspicious EBT transactions at the store from January 28, 2017 through October 17, 2018.

During the hearing, the Department presented Respondent's FAP usage history and issuance summary. Besides the transactions in question, Respondent's FAP usage appeared to be ordinary. The transactions in question, however, were far from ordinary.

Respondent spent an unreasonable amount of his FAP benefits on purchases at [REDACTED]. The value of the purchases alone is sufficient to raise the question of whether there is some fraud going on. Respondent routinely spent a sizeable portion of his monthly FAP allotment at [REDACTED], despite having access to and regularly shopping at full grocery stores.

When looking at Respondent's FAP issuance history in conjunction with his shopping history at [REDACTED], a very clear pattern emerges. All 51 suspicious purchases were made within a few days from the issuance of a FAP allotment. It seems as though Respondent developed a scheme whereby he would engage in fraudulent transactions to unload his FAP benefits almost immediately upon receiving them.

The transactions are for an excessive amount given the inventory of the store and the other shopping options available. After viewing the photographs of the inventory and Respondent's purchase history, it seems highly unlikely for those purchases to have been legitimate.

The evidence shows that Respondent engaged in a pattern of suspicious FAP purchases from a store that was proven to be engaged in fraudulent FAP trafficking during the same time. Respondent did not appear at the hearing to provide any explanation for his EBT transactions at [REDACTED]. Accordingly, the Department's un rebutted testimony and exhibits established by clear and convincing evidence that Respondent engaged in unlawful FAP trafficking.

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, 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 one-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 51 transactions that qualified as trafficking. The total value of those 51 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 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 one year.

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 one year.

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

LaClair Winbush
17455 Grand River
Detroit, MI
48227

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel