



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 5, 2017
MAHS Docket No.: 16-016805
Agency No. ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 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 April 17, 2017, from Detroit, Michigan. The Department was represented by ██████████ ██████████ 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, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 October 26, 2016 to establish an OI of 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 only use her FAP benefits for lawful food purchases.
5. The Department was not aware of Respondent having 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 August 1, 2014, to February 28, 2015 (fraud period).
7. During the fraud period, the Department alleges that Respondent trafficked \$606 in FAP benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$606.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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 January 1, 2016, 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 or more, or
 - the total amount is less than \$500, 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 (January 2016), p. 5-7;12-13.

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 2016), p. 7-8; 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 or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or

eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(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 of her FAP benefits because she trafficked \$606 of her FAP benefits at [REDACTED] (Store). The Department asserted that Respondent engaged in 11 unauthorized transactions and the unauthorized use of her FAP benefits at Store. Department policy provides that trafficking is: the buying, or selling of FAP benefits for cash or consideration other than eligible food; selling products purchased with FAP benefits for cash or consideration other than eligible food; and purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (May 2014), pp. 1-2. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2013), pp. 2- 3. 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.

The Department presented evidence that the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) charged Store with trafficking and that the store was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). (Exhibit A, pp. 19-23). To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when she used her FAP benefits at Store.

The Department contended that Respondent’s FAP purchases were trafficked because the store did not have the inventory or infrastructure to support the purchases that were being made. Specifically, according to the investigation report prepared, the Department argued that the Store is a small 700 sq. ft. gas station with one cash register and one optical scanner located behind Plexiglas, and with no shopping carts or baskets. The Department argued that no prepared food (hot or cold) was sold on site, that there was no meat or cheese for sale by the pound, no meat bundles for sale, and no vegetables, as the venue was a gas station and selling tobacco products, gasoline, paper products, and small individually packed snack food and individual juices and pops. The Department maintained that the shelves were scarce with canned and/or dry foods. The Department asserted that the store had limited eligible food stock with small dollar values, which make it impractical to purchase large amounts of food or to support the higher dollar and high volume transactions that were occurring in short amounts of time. (Exhibit A, pp. 4-5, 11-18).

In support of its contention that Respondent trafficked her FAP benefits, the Department presented Respondent’s FAP transaction history showing FAP purchases at Store by date, time, and amount, as well as a benefit summary inquiry showing that Respondent

received FAP benefits issued by the State of Michigan during the fraud period. (Exhibit A, pp. 48-52). The Department asserted that because the average transaction at similar establishments is between \$4 and \$7, it considered purchases greater than \$11, even dollar transactions, and multiple back to back transactions at Store as having been trafficked. A review of Respondent's FAP transaction history shows that Respondent made several large and even dollar purchases at the store in varying amounts with single purchases up to \$100. The transactions history also shows numerous high dollar, back to back transactions, including a transaction on December 5, 2014, in the amount of \$100 and a second transaction three minutes later for \$95. (Exhibit A, pp. 48-52).

The foregoing evidence, coupled with the USDA's finding that Store trafficked FAP benefits, was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at Store.

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 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 as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning the FAP. Because this is Respondent's first IPV, she is subject to a one-year disqualification from her receipt of FAP benefits

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 a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) 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, which can be established through circumstantial evidence. BAM 720, p. 8.

As discussed above, the Department presented clear and convincing evidence, through its testimony and Respondent's transaction history to support its allegation that Respondent trafficked FAP benefits at Store. The identified transactions on the transaction history total \$606. (Exhibit A, pp. 51-52). Therefore, based on the benefit summary inquiry provided by the Department establishing that Respondent was issued FAP benefits by the State of Michigan during the fraud period and the FAP transaction history which shows \$606 in countable FAP transactions at Store that involved

trafficking, the evidence established that Respondent trafficked \$606 of her FAP benefits during the fraud period and the Department is entitled to recoup 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 by trafficking FAP benefits at Store.
2. Respondent **did** receive an OI of program benefits in the amount of \$606 from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures in accordance with Department policy for the amount of \$606, less any amount already recouped and/or collected.

It is FURTHER ORDERED that the Department disqualify Respondent from FAP for a period of **12 months**.

ZB/tlf



Zainab A. Baydoun
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Washtenaw-Hearings@michigan.gov
OIG Hearings
Recoupment
MAHS

**Respondent –
Via First-Class Mail:**

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