



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 15, 2018
MAHS Docket No.: 18-008447
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 24, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], 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. Is the Department entitled to recoup and/or collect \$793.75 from Respondent for unauthorized FAP transactions?

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 August 1, 2018, alleging that Respondent committed an IPV of her FAP benefits and it was entitled to recovery of the unauthorized transactions.
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 during the alleged fraud period.
4. In May 2017, Respondent received a \$2,100 FAP supplement that was deposited on her FAP Electronic Benefit Transfer (EBT) card (Exhibit A, p. 39).
5. Respondent was aware that she could not sell or trade her FAP benefits (Exhibit A, pp. 35-37).
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding this restriction.
7. Respondent's FAP EBT card was used for two separate transactions made at Sam's Club on May 20, 2018, the first in the amount of \$400 at 4:45 pm, the second in the amount of \$393.75 at 5:26 pm. Each transaction was used with two separate Sam's Clubs' membership cards belonging to different individuals. (Exhibit A, pp. 15-24.)
8. Respondent has no prior IPV's.
9. 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.

The Department alleges that Respondent committed an IPV and requests that she be disqualified from FAP eligibility for a 12-month period. The Department contends that

Respondent committed an IPV by trafficking FAP benefits. IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP] regulations, or any State statute for the purpose of . . . trafficking of [FAP] benefits or [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2); BAM 720, p. 12. Trafficking includes selling, attempting to sell, or otherwise effecting 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. 7 CFR 271.2. To establish an IPV by trafficking, the Department must present clear and convincing evidence that the household member committed, and intended to commit, an intentional program violation. 7 CFR 273.16(e)(6).

In this case, the Department alleged that Respondent committed an IPV by selling FAP benefits. In support of its case, the Department presented evidence showing that, shortly after receiving a \$2,100 FAP supplement deposited onto her FAP EBT card, Respondent used her EBT card at [REDACTED] on May 20, 2017 for two separate transactions: the first in the amount of \$400 at 4:45 pm, the second in the amount of \$393.75 at 5:26 pm. Each transaction was used with two separate [REDACTED] membership cards belonging to different individuals. (Exhibit A, pp. 15-24.) Video surveillance photos from [REDACTED] timestamped at the times on or about the times the EBT cards were used as well as photos from the Secretary of State established that the individuals in the surveillance photos were Respondent and the [REDACTED] card holders. The OIG also testified and presented evidence that phone records showed that a query concerning the balance on Respondent’s FAP EBT card was made from a telephone number that had previously been reported to the Department by the [REDACTED] card holder from the first transaction at issue (Exhibit A, p. 31).

Viewed in its entirety, and in the absence of any evidence by Respondent to dispute the evidence presented by the Department, the Department has presented sufficient circumstantial evidence to show, by clear and convincing evidence, that Respondent had exchanged her FAP benefits for cash or consideration other than eligible food by allowing others to use her FAP benefits. Therefore, the evidence established that Respondent committed an IPV.

Disqualification

An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(i). The Department established that Respondent did not have any prior FAP IPV violations. Accordingly, she is subject to a twelve-month disqualification from the FAP program for a first IPV case. 7 CFR 273.16(b)(1)(i).

Recovery of Trafficked Benefits

The Department is entitled to recoup and/or collect from an individual the value of any benefits that are trafficked. 7 CFR 273.18(a)(1)(ii). The value of claims arising from trafficking-related offenses is the value of the trafficked benefits as determined by the

individual's admission, an adjudication, or documentation that forms the basis for the trafficking determination. 7 CFR 273.18(c)(2).

As discussed above, in this case, the Department established that Respondent trafficked her FAP benefits by exchanging them for cash or consideration other than eligible food. The FAP benefits she trafficked totaled \$793.75. Therefore, the Department is entitled to recoup and/or collect \$793.75 from Respondent.

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. Respondent trafficked \$793.75 in FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$793.75 in accordance with Department policy, less any amounts already recouped and/or collected.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



AE/tm

Alice C. Elkin
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) 763-0155; 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

DHHS

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: [REDACTED]
IPV-Recoupment Mailbox