



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED]

Date Mailed: April 12, 2019
MAHS Docket No.: 18-013371
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 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 April 8, 2019, 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 57 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-57.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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)?
3. Should Respondent be disqualified from receiving FAP benefits?

FINDINGS OF FACT

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

1. Respondent was an ongoing recipient of FAP benefits from the Department.
2. On February 10, 2015, the Department issued to Respondent a Redetermination form in order to gather relevant information regarding Respondent's ongoing

eligibility for FAP benefits. The form was required to be filled out and returned to the Department. On February 26, 2015, Respondent returned the completed Redetermination to the Department. Exhibit A, pp. 20-25.

3. On the Redetermination, Respondent acknowledged that he received, reviewed, and agreed with the pamphlet entitled Important Things to Know. Exhibit A, p. 25.
4. The Important Things to Know pamphlet informed Respondent that it is fraudulent to sell FAP benefits or use someone else's FAP benefits and that the penalty for doing so or attempting to do so is disqualification from the program and a requirement to pay back any amount sold or attempted to be sold. Exhibit A, pp. 39-40.
5. Thus, Respondent was aware of the responsibility to not traffic FAP benefits and the penalties for doing so.
6. Respondent did not have an apparent mental or physical impairment that would limit his understanding or ability to fulfill this requirement. Exhibit A, p. 16.
7. Respondent's application for FAP benefits was approved and Respondent began receiving FAP benefits on his EBT card. Respondent did not have any other authorized users on his account. Thus, to use his FAP benefits, Respondent's EBT card and PIN had to be presented at the point of sale. Exhibit A, pp. 26-31.
8. Respondent was arrested and booked into the Wayne County Jail on or about September 8, 2015. Respondent remained in Wayne County Jail until February 16, 2016, when he was released to the custody of the Michigan Department of Corrections. Respondent has remained in the custody of the Michigan Department of Corrections. Exhibit A, pp. 32-38.
9. After Respondent was incarcerated, he continued to receive FAP benefits from the Department. From September 12, 2015, through December 23, 2015, Respondent's EBT card and PIN were used to make 20 purchases totaling [REDACTED]. Exhibit A, pp. 26-27.
10. The Department's OIG filed a hearing request on December 4, 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-9.
11. The Department alleges an overissuance of FAP benefits in the amount of [REDACTED] based on Respondent's FAP benefits being used while Respondent was incarcerated. Exhibit A, pp. 1-9.
12. This was Respondent's first alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9; 17-19.

13. 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), 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 the use of Respondent's FAP benefits while Respondent was incarcerated was the result of unlawful trafficking of FAP benefits by Respondent, which constitutes an IPV.

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 720 (January 2016), p. 1; 7 CFR 273.16(c).

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. Trafficking includes not only the improper purchase or sale of FAP benefits, but also the attempt to purchase or sell FAP benefits for consideration other than eligible food. BAM 700 (January 2016), pp. 1-2; 7 CFR 271.2. An individual who offers to sell his or her benefits by either making an offer in a public way or posting an EBT card for sale online has committed an IPV. 7 CFR 274.7(b). The posting of an EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in an IPV. 7 CFR 274.7(a).

An IPV requires that the Department establish its allegation by clear and convincing evidence. BAM 720, p. 1; see also 7 CFR 273.16(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 evidence on the record established that Respondent's FAP benefits were used to make 20 purchases during Respondent's incarceration, which began September 8, 2015. Those purchases totaled [REDACTED]. The Department's position is that because Respondent was incarcerated, the benefits must have been trafficked, as Respondent had no way to make the purchases himself.

Certainly, the Department has proven that those purchases were not made lawfully as they were not purchases of eligible food products for the household's consumption. However, the inquiry does not end at that point. In order to be subject to an IPV disqualification for trafficking, one must be shown to have exchanged other consideration for the FAP benefits in question. In this case, there is not even an allegation of an exchange of consideration. Thus, the Department failed to establish by clear and convincing evidence that Respondent committed an IPV by trafficking FAP benefits.

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; 7 CFR 273.16(b). Clients are disqualified for 10 years for an FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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). 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.

In this case, there is no IPV related to FAP benefits. Thus, Respondent is not subject to a disqualification.

Overissuance

For trafficked FAP benefits, the measure of an overissuance is the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2016), pp. 1-2; 7 CFR 273.18(c)(2). As discussed above, the Department has not shown that Respondent trafficked FAP benefits illegally in violation of BAM 720 and 7 CFR 273.16(c)(2). Thus, the Department has not established an overissuance of FAP benefits on that basis.

However, a resident of an institution is not eligible for FAP benefits. BEM 212 (October 2015), p. 8. Respondent was a resident of an institution as of September 8, 2015. In these instances, the measure of an overissuance is the amount of benefits issued to the

client in excess of what it was eligible to receive. BAM 700, p. 1; 7 CFR 273.18. After becoming a resident, Respondent received at least [REDACTED] in FAP benefits. Thus, the Department has presented sufficient evidence to substantiate that overissuance finding. Thus, the Department is entitled to recoup and/or collect [REDACTED] from Respondent.

DECISION AND ORDER

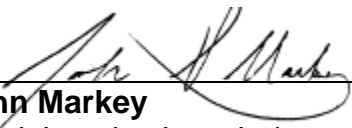
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to the Food Assistance Program.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of [REDACTED] that the Department is entitled to recoup and/or collect.
3. Respondent is not subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amounts already recouped or collected.

It is FURTHER ORDERED that Respondent shall not be disqualified from receiving FAP benefits for a period of one year.

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

