



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 3, 2019
MOAHR Docket No.: 19-003810
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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on May 30, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] 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, 71 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-71.

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) 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 was an ongoing recipient of FAP benefits from the Department. On September 15, 2015, the Department issued to Respondent a Redetermination form in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. On [REDACTED], 2015, Respondent returned the

completed form to the Department. Respondent signed the form, thereby acknowledging that she had received, read, and agreed with the information in the assistance application Information Booklet, including the Important Things to Know publication. That publication informed 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, pp. 38-43.

2. Respondent did not have any mental or physical impairment that would limit her understanding or ability to fulfill her obligations regarding her FAP benefits. Exhibit A, p. 37.
3. Respondent was approved for FAP benefits. During the time period relevant to this matter, Respondent was typically receiving her monthly allotments of FAP benefits on the 21st of every month. Exhibit A, pp. 30-35.
4. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store called [REDACTED]. At the conclusion of the investigation, FNS issued to [REDACTED] a November 27, 2017, 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. 11-26.
5. 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 store.
6. From March 1, 2015 through November 30, 2017, Respondent made 89 purchases at Lions. Of those 89 purchases, the Department identified 58 purchases that were flagged by the Department as fraudulent due to meeting the Department's criteria for trafficking at that particular store. Exhibit A, pp. 30-35.
7. On April 18, 2019, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in 58 fraudulent transactions at [REDACTED] from March 1, 2015 through November 30, 2017, totaling \$2,136.92. Exhibit A, pp. 1-9; 30-35.
8. The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2015 through November 30, 2017. Exhibit A, pp. 1-9.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,136.92. Exhibit A, pp. 1-9.
10. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9.

11. Respondent did not appear at the hearing to rebut any of the Department's allegations.
12. 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 58 of Respondent's 89 purchases at [REDACTED] during the alleged fraud period 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. 1. Trafficking is defined as buying, selling, or stealing 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(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 not 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 and no carts or baskets. Such an arrangement would make the completion of large transactions difficult, if not impossible.

The issue in this case, however, is not whether [REDACTED] was engaged in fraudulent activity. That has already been established. The issue is whether the Department has

shown by clear and convincing evidence that Respondent's flagged purchases at [REDACTED] were illegitimate. The Department failed to meet that burden.

In addition to the FNS investigative material showing [REDACTED] engaged in fraud, the Department presented evidence showing Respondent's group composition and purchase history. Respondent's group included Respondent, Respondent's husband, and their eight children. The Department established that Respondent made 58 EBT transactions at the store from March 1, 2015 through November 30, 2017 that were determined by the Department to be fraudulent. The average value of those 58 transactions was \$36.84. Additionally, the Department witness recounted a conversation she had with Respondent and Respondent's husband where it was explained that the purchases in question were for what is commonly known as take and bake pizzas.

Given that Respondent lives in a household of ten, it seems entirely reasonable to average \$36.84 or more per trip to a store, even for snacks at a small local corner store without extensive inventory. Even purchasing just a soda and a granola bar for each member of the household would justify that amount.

Additionally, the timing and patterning of the purchases are not indicative of fraudulent activity. Respondent's transactions did not correspond all that tightly with the dates of FAP issuance, and they were regularly made around dinnertime, which comports with Respondent's assertions to the Department.

After reviewing the evidence, it cannot be concluded with any degree of confidence that any of those transactions were fraudulent, let alone each of them. As shown in the photographs of the store, the inventory certainly was sufficient to justify an average transaction of \$36.84, particularly when taking into consideration the fact that Respondent was shopping for a household of ten people. Just because Respondent shopped at a store that was engaged in fraud does not mean that she played a role in that fraud. Her purchase history is perfectly reasonable and not indicative of fraud. Accordingly, the Department's testimony and exhibits failed to establish 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 IPV related to FAP benefits. Therefore, Respondent is not subject to a one-year disqualification.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7 CFR 273.18. The OI amount for trafficking-related IPVs 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 there was no trafficking. Thus, there is no overissuance.

DECISION AND ORDER

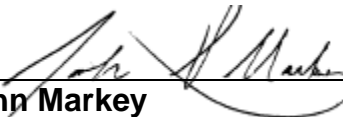
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department did not establish by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of FAP benefits.
3. Respondent shall not be disqualified from receiving FAP benefits for a period of one year.

IT IS ORDERED that the Department must delete the alleged overissuance.

IT IS FURTHER ORDERED that Respondent is not disqualified from receiving FAP benefits.

JM/cg



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

Via Email:

MDHHS-Wayne-19-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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