



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]
[REDACTED]

Date Mailed: November 4, 2019
MOAHR Docket No.: 19-008288
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 October 31, 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, a 72-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-72.

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. On [REDACTED] 2017, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that she lived in a household of five. Exhibit A, pp. 16-68.

2. On the application, Respondent acknowledged that she received, reviewed, and agreed with the pamphlet entitled "Important Things to Know." Exhibit A, pp. 49-50.
3. The "Important Things to Know" pamphlet advised Respondent that trading, selling, or misusing 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. 56-58.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department. Exhibit A, p. 28.
5. Respondent was approved for FAP benefits. On December 11, 2017, the Department issued to Respondent her monthly FAP allotment of \$670. Exhibit A, p. 69.
6. On December 12, 2017, one day after receiving the \$670 FAP allotment, Respondent's EBT card was used to make a transaction at a [REDACTED] location in [REDACTED] Township, Michigan. The receipt for that transaction shows that Respondent purchased a large quantity of Red Bull energy drinks and nothing more. In total, Respondent purchased 7 cases of the energy drink (168 cans) for \$261.73. The Red Bull purchase exhausted 39% of Respondent's monthly FAP allotment. Exhibit A, pp. 10-11.
7. Respondent's case was flagged for fraud, and Mr. [REDACTED] was assigned to investigate the matter.
8. Mr. [REDACTED] reviewed the transaction history and account information and concluded that Respondent's [REDACTED] transaction was not a bona fide purchases of eligible food products meant for household consumption.
9. Mr. [REDACTED] further concluded that sufficient evidence existed to allege an IPV against Respondent for engaging in fraudulent trafficking of FAP benefits.
10. The Department's OIG filed a hearing request on July 16, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in one fraudulent transaction on December 12, 2017, totaling \$261.73. Exhibit A, pp. 1-8.
11. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, pp. 1-8.

12. The Department's OIG indicates that the time period it is considering the fraud period is December 12, 2017 through December 12, 2017 (fraud period). Exhibit A, pp. 1-8.
13. 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), 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 Respondent committed an IPV by trafficking \$261.73 of FAP benefits via her December 12, 2017 Red Bull transaction at the [REDACTED] Township [REDACTED] store.

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; 7 CFR 271.2. Trafficking includes not only the improper purchase, sale, or use of FAP benefits, but also the attempt to purchase, sell, or use FAP benefits for consideration other than eligible food. BAM 700 (October 2016), p. 2; 7 CFR 271.2. Trafficking may be established by circumstantial evidence and can be inferred from the

evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996). In order to sustain an IPV for trafficking, the Department must prove by clear and convincing evidence that the client intentionally committed an act involving the unlawful transfer or attempted transfer of FAP benefits. 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 Department has established that Respondent was aware that misuse of her FAP benefits is a violation of state and federal laws for which she may be disqualified from the program, fined, and incarcerated, amongst other potential penalties. Further, the Department made Respondent aware that it was unlawful to allow non-group members to use her card or exchange her FAP benefits for anything other than eligible food.

The Department alleges that the December 12, 2017 Red Bull purchase Respondent made at the [REDACTED] store with her FAP benefits was an instance of trafficking. The Department conceded that all items purchased in the suspected trafficking transaction were eligible food items. The Department's position in this case is that Respondent purchased so much of a single product that it could not reasonably be consumed or even stored by her household. Thus, Respondent must have been doing something other than using the benefits for her own household's consumption. The Department contends that if Respondent was providing the benefits to someone who was not eligible to receive them, Respondent must have received something in return, which is unlawful trafficking.

After reviewing the record, the Department has met its burden of proving by clear and convincing evidence that Respondent engaged in FAP trafficking in the [REDACTED] transaction. When reviewing the receipt for the purchases, it shows that the only items purchased were 24-packs of Red Bull energy drink. In total, Respondent purchased at least 168 cans of Red Bull, which is a completely unreasonable amount to expect a household of five to consume, even if they were meant to last for a long time. The quantity of Red Bull purchased is clearly not indicative of a normal purchase made for household consumption. Clearly, Respondent used her benefits to purchase items for other, non-household members.

Further bolstering the conclusion that Respondent unlawfully trafficking her FAP benefits was Mr. [REDACTED] credible testimony regarding a conversation he had with Respondent on March 28, 2019. During that conversation, Respondent admitted that she let her boyfriend use her FAP EBT card to make the offending purchase. She further admitted that the Red Bull was not for her home. Rather, it was purchased for use in a new bar opened by a family member of either Respondent or her boyfriend.

While there is no direct evidence of consideration received by Respondent in exchange for the unlawfully transferred FAP benefits, the Department showed by clear and convincing evidence that the amount in question was unlawfully trafficked. Respondent provided to someone else other than a member of her FAP group the proceeds of her FAP benefits in

a manner that is highly indicative of fraud. The evidence on the record clearly shows that the highly suspicious purchases were made using Respondent's EBT card and pin. The nature of the purchases is indicative of trafficking. When combined with Respondent's lack of any rebuttal testimony regarding the suspicious incidents, the record is both clear and convincing that Respondent engaged in FAP trafficking, which is an IPV. Despite being made aware of the requirements and penalties for noncompliance, the evidence clearly shows Respondent engaged in a fraudulent transaction on December 12, 2017.

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 ten years for a 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 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 trafficked \$261.73 worth of FAP benefits. Thus, the Department is entitled to recoup and/or collect from Respondent \$261.73.

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 with respect to FAP.
2. The Department is entitled to recoup and/or collect the total of \$261.73 as a result of Respondent's unlawful trafficking of that amount of FAP benefits

3. Respondent is disqualified from receiving FAP benefits for a period of 12 months.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$261.73, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of 12 months.

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

Denise McCoggle
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48239

Petitioner

OIG
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Respondent

[REDACTED]