



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 16, 2020
MOAHR Docket No.: 19-008647
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, 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 December 16, 2019, from ██████████ Michigan. The Department was represented by Philip Giuliani, 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 the Department establish that Respondent trafficked FAP benefits that it is entitled to recoup and/or collect?

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 or around July 25, 2019, alleging that Respondent committed an IPV.

2. Respondent was a recipient of FAP benefits issued by the Department.
3. Respondent was aware of the responsibility to use her FAP benefits for lawful purchases and the Department had no reason to believe that Respondent had a physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
4. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2015 to November 30, 2016 (fraud period).
5. During the fraud period, Respondent redeemed her FAP benefits at [REDACTED] (Store).
6. The Department alleges that during the fraud period, Respondent trafficked \$757 in FAP benefits issued by the State of Michigan at Store.
7. Respondent did not have an Authorized Representative (AR) assigned to her FAP case with the Department during the fraud period and did not report her electronic benefit transfer (EBT) card lost or stolen during the fraud period.
8. This was Respondent's first alleged FAP IPV and the Department has requested that Respondent be disqualified from receiving FAP benefits for 12 months.
9. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service 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.

Intentional Program Violation

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving,

possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 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 “buying, selling . . . or otherwise effecting an exchange of [FAP] benefits issued and accessed via [EBT] cards, card numbers and personal identification numbers (PINs) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” or the attempt of such actions. 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 alleges that Respondent committed an IPV because she trafficked \$757 of her FAP benefits at Store. The Department presented evidence that the United States Department of Agriculture – Office of Inspector General (OIG), the Michigan State Police, and the Department’s OIG conducted a joint investigation and determined that Store was engaging in trafficking of FAP benefits. The investigators conducted multiple undercover operations where they were able to exchange FAP benefits for cash at the rate of \$0.50 for every one dollar and were able to purchase cigarettes and beer with FAP benefits at double the normal price. To support a trafficking case against Respondent, 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 at Store 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 documents prepared, and based on the photographs of the Store presented, the Department argued that Store was a convenience store with very limited supply of eligible food. The Department maintained that much of the present stock at Store was either expired, covered in a layer of dust, evidencing a low turnover of any available inventory, or that it was contaminated by rodent infestation. Additionally, most of the store shelves were empty of eligible food stock and most items found within the store were comprised of small “low-cost” snack items. It was noted that the Store had no optical scanner, no shopping carts or baskets, limited counter space, and operated its sales through a plastic barrier with a turnstile, preventing quick and large transactions from being completed. The Department argued that it was impractical for customers to have purchased large amounts of food and that the inventory could not support the higher dollar and higher volume transactions that were occurring in short amounts of time.

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. There was no evidence that Respondent had an AR on her FAP case at the time of the transactions in question, and she did not report her EBT card lost or stolen during the fraud period. The Department asserted that it considered single purchases greater than

\$39.00 and back-to-back transactions totaling more than \$39.00 as having been trafficked. A review of Respondent's FAP transaction history shows that Respondent made multiple purchases at Store in amounts greater than the threshold identified and that she had back-to-back transactions in total amounts greater than \$39.00. Respondent also had large single purchases in amounts up to \$84.21. The purchase history also showed various transactions ending in \$.00, \$.50 or \$.99, which can be indicative of trafficking. The Department further maintained that based on the IG – 311 EBT History, Respondent had access to other establishments that sold food; and Store was not her only option to purchase food.

A review of Respondent's unusual transactions, coupled with the finding that Store was a trafficking establishment 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. Because the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits, it has established that she committed an IPV in connection with her FAP case.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. The Department has established by clear and convincing evidence that Respondent committed an IPV. No evidence of any prior FAP IPVs was presented. Because this was Respondent's first FAP IPV, she is subject to a one-year disqualification from receipt of FAP benefits.

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 will be 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). BAM 720, p. 8.

As discussed above, the Department presented clear and convincing evidence to support its allegation that Respondent trafficked FAP benefits at Store. The identified transactions on the transaction history total \$757. 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 \$757 in countable FAP transactions at Store that involved trafficking, the evidence established that Respondent trafficked \$757 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 her FAP benefits.
2. Respondent trafficked \$757 in FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$757 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**.



ZB/jaf

Zainab A. Baydoun
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

Jeanette Cowens
MDHHS- [REDACTED] Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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