[redacted]
WI [redacted]

Date Mailed: January 10, 2020
MOAHR Docket No.: 19-009595
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted] [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 January 9, 2020, from Lansing, Michigan. The Department was represented by Mark Mandreky, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by Respondent, [redacted] [redacted] via three-way conference telephone call.

Department's Exhibit A pages 1-103 were admitted as evidence.

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 benefits for FAP?

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 27, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

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.

4. Respondent was aware of the responsibility to use the FAP EBT card properly.

5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

6. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2014-November 30, 2014 (fraud period).

7. During the fraud period, Respondent was issued $449.78 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $0 in such benefits during this time period.

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $449.78.

9. This was Respondent's second alleged IPV.

10. A review of Respondent's EBT history reveals that she has one previous Michigan and National FAP IPV sanction from March 1, 2006 to February 28, 2007 (Docket #2005-15075).

11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States 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.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of $500.00 or more under the AHH program.

- FAP trafficking overissuances that are not forwarded to the prosecutor.

- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and

  - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is $500 or more, or

  - the total amount is less than $500, and

    - the group has a previous IPV, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
    - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (1/1/2016) (Emphasis added).

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 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016).

A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the Food Stamp Act of 1977, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id*. DHHS policy BAM 700-

Overissuance: The amount for trafficking-related IPVs is the value of the trafficked benefits (attempted or actually trafficked).

FNS ruled on October 4, 2011, that "an individual who offers to sell their benefits by either making their offer in a public way or posting their EBT card for sale online has committed an IPV." Section 7(b) of the food stamp act and 7 CFR 274.7(a) clearly states posting your EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in and IPV. BAM 720. Intentional Program Violations states that “IPV is suspected for a client who is alleged to have trafficked FAP benefits”. MCL 750.300a, BEM 203, 7 U.S.C. 2016 A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act of 1977, 7. U.S.C. 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. DHHS Policy BAM 700 defines Overissuance "For FAP benefits, an overisssuance is also the amount of benefits trafficked) stolen, traded bought or sold) or attempted to be trafficked".

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 2. 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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.

This was Respondent’s first alleged instance of an IPV. Therefore, a 24-month disqualification is required.

Overissuance
When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

This Administrative Law Judge finds:

In this case, All Things Inc. is classified as a Mobile Food Vendor that delivered various meat products such as beef, chicken, and fish. All Things Inc. was permanently disqualified by the United States Department of Agriculture, Food and Nutrition Service (USDA-FNS) on October 6, 2016 for Trafficking EBT/FAP/SNAP Benefits contrary to MCL 750.300a. The Food and Nutrition Service (FNS) is the federal agency which licenses retailers for participation in the Supplemental Nutrition Assistance Program (SNAP). Their investigation determined an analysis of the records revealed Electronic Benefit Transfer (EBT)

transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable activity for this type of firm.

A contractor for the USDA-FNS completed an onsite visit with All Things Inc. at their business address on May 4, 2016. The result of the visit found many of the transactions completed by the vendor were not supported. USDA-FNS Flagged the vendor for multiple transactions being made from individual benefit accounts in unusually short time frames, the majority or all of individual recipient benefits were exhausted in unusually short periods of time, and that excessively large purchase transactions were made from recipient accounts. A review of the Respondent's EBT history revealed that their EBT Bridge card was used to perform unauthorized FAP transactions with All Things Inc.

The Respondent has one previous Michigan and National FAP IPV sanctions from March 1, 2006. The Respondent has no apparent physical or mental impairment that would limit their understanding or ability to fulfill the requirements for the proper use of food stamp benefits. The Respondent is responsible for $449.78 in unauthorized FAP transactions from November 1, 2014 to November 30, 2014, resulting from two transactions dated November 9, 2014. One transaction for $299.89 and one for $149.89.

Clear and convincing proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Respondent is responsible for unauthorized Food Assistance Program transactions and engaged in FAP trafficking in contravention of Department policy. The Department has established its case by its care by clear and convincing evidence.

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 did solicit for/receive an OI of FAP benefits in the amount of $449.78.

The Department is ORDERED to initiate recoupment/collection procedures for $449.78 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 24 months beginning January 9, 2020 because this is the second Intentional Program Violation established by the Department.

LL/nr

Landis Lain
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

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI
48911

Ingham County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG- via electronic mail
PO Box 30062
Lansing, MI
48909-7562

Respondent

[redacted]- via first class mail
[redacted], WI
[redacted]