



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: February 3, 2020
MOAHR Docket No.: 19-009759
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 23, 2020, from Detroit, Michigan. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). Respondent was present with her daughter [REDACTED]. Also present was Arabic Interpreter, [REDACTED].

ISSUES

1. Is the Department entitled to recoup/collect Food Assistance Program (FAP) benefits from Respondent?
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 for 12 months?

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 September 6, 2019, to establish it is entitled to recoup/collect 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 for a period of 12 months.
3. Respondent acknowledged was made aware of the responsibility to use FAP benefits for lawful purchases.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is April 23, 2017 through January 8, 2018 (fraud period).
6. During the fraud period, the Department alleges that Respondent trafficked FAP benefits in the amount of \$1,239.81.
7. The Department alleges that it is entitled to recoup/collect FAP benefits in the amount of \$1,239.81 from Respondent.
8. This was Respondent's first alleged IPV.
9. 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), 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 October 1, 2014, 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (October 2017), p. 12-13

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 (October 2018), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility or trafficked their benefits. BAM 720, p. 1 (emphasis in original); 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 alleges that Respondent committed an IPV because she trafficked her FAP benefits at Samaha Market located at 6100 Miller Street, Detroit, MI 48211 (Store). Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p 2. The federal regulations define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2.

The Department presented evidence that the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) charged Store with trafficking and that it was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP) (the federal name for FAP). To support a trafficking case against Respondent, however, the Department must establish by clear and convincing evidence that Respondent engaged in trafficking when she used her FAP benefits at Store.

In support of its contention that Respondent trafficked her FAP benefits, the Department presented a FAP transaction history for Respondent showing her FAP purchases at Store by date, time, and amount. Respondent’s FAP transaction history at Store showed a multitude of transactions over \$126 and up to \$201.35. Additionally, Respondent had numerous transactions that ended in even dollar amounts, as well as multiple transactions in one day.

The Department testified that the high-priced transactions were not supported by Store’s inventory. The evidence showed that Store was a small store with a limited inventory of FAP eligible food items. Store had a small supply of fresh vegetables and fruit. Store stocked some fish, eggs and deli meat but no other meat products. Store had no baskets, carts or optical scanners. Store also had only one cash register. Store did not have any storage coolers or freezers for additional stock. Additionally, Store had a bulletproof glass barrier that only allowed a limited number of items to be purchased at one time. Store’s size and inventory made Respondent’s high expense FAP purchases unlikely to be legitimate food purchases.

Respondent testified that she would purchase large quantities of food at one time, as well as on credit. When asked how she was able to purchase large quantities of food when store had no shopping carts or baskets, Respondent stated she would seek assistance from other customers in the Store. Respondent was asked how she was able to spend such large sums of money at Store which only had limited inventory, Respondent testified that Store’s food items were overpriced. Respondent was then questioned as to why she shopped at Store that had overpriced items when her FAP usage history showed that she also shopped at other [REDACTED]. Respondent stated that Store was on her way to Mosque and that Store had good dates. Respondent did not have any explanation as to why there were multiple

transactions in a day, including three transactions in a single day within ten minutes, or why so many of her transactions ended in even dollar amounts.

A review of Respondent's transactions at Store, in consideration of Store's limited inventory and layout, establishes by clear and convincing evidence that Respondent trafficked at Store. It is not reasonable that Respondent would be able to purchase such large quantities of food at a store that did not have baskets or carts and operated through a bulletproof turnstile. Additionally, Respondent had no explanation as to why her FAP benefit card was used to make multiple purchases in short time periods. Such circumstances are indicative of trafficking. Because the Department established by clear and convincing evidence that Respondent trafficked his 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 court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (October 2016), p. 1. 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. 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, the Department requested that Respondent be subject to a 12-month disqualification period. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP. Therefore, Respondent is subject to a one-year disqualification from her receipt of FAP benefits.

Recoupment/Collection

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the benefits. BAM 700, p. 1. The amount of benefits the Department is entitled to recoup/collect for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) 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, which can be established through circumstantial evidence. BAM 720, p. 8.

As discussed above, the Department presented clear and convincing evidence, through its testimony and Respondent's transaction history, to support its allegation that

Respondent trafficked at Store. The Department identified all transactions on Respondent's transaction history at Store in excess of amounts that reasonably could have been expended at Store. These transactions total \$1,239.81. Therefore, the Department is entitled to recoup and/or collect \$1,239.81 for trafficked FAP benefits at Store during the fraud period.

DECISION AND ORDER

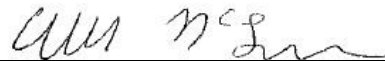
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent trafficked \$1,239.81 in FAP benefits.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP amount of \$1,239.81, less any amount already recouped and/or collected.

It is FURTHER ORDERED that the Department personally disqualify Respondent from FAP for a period of 12 months.

EM/cg



Ellen McLemore

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

Via Email:

MDHHS-Wayne-55-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent - Via First-Class Mail:

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