



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 14, 2020
MOAHR Docket No.: 19-011065
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 February 12, 2020, from Detroit, Michigan. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). Respondent was present and represented herself.

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 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 [REDACTED], 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.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to use her FAP benefits for lawful purposes.
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 April 9, 2017 through June 25, 2018 (fraud period).
7. During the fraud period, the Department alleges that Respondent trafficked \$567.23 in FAP benefits.
8. The Department alleges it is entitled to recoup/collect FAP benefits in the amount of \$567.23 from Respondent.
9. This was Respondent's first alleged IPV.
10. 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), pp. 12-13

Intentional Program Violation

Suspected IPV means an overissuance 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 [REDACTED], located at [REDACTED], Detroit, MI 48227 (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 \$24.56 and up to \$58.97. Additionally, Respondent made high-priced transactions at Store on the same date.

The Department testified that the high-priced transactions were not supported by Store’s inventory. The evidence showed that Store was a small convenience store with a limited inventory of mostly chips, pop, and candy. Store had some cereal, frozen goods, fresh meat, fruits and vegetables. Store had few baskets and no carts. Store had only one cash register that did not have an optical scanner. 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 during the fraud period she lived in close proximity to Store. Respondent stated she did not have a vehicle at the time and would frequently purchase food at Store. Respondent stated she had high-priced transactions because the individual that worked at Store would allow her to purchase items on credit. Respondent testified that when her benefits were loaded onto her card on the 19th of each month, she would reimburse Store for the previously purchased items.

A review of Respondent’s transactions at Store, in consideration of Store’s inventory and layout, was sufficient to establish by clear and convincing evidence that Respondent trafficked at Store. Respondent stated that she would purchase items on credit and reimburse Store when she received her FAP benefits on the 19th of each month. However, Respondent had no explanation for all of the high-priced transactions

that occurred later in the month. Additionally, Respondent had no explanation as to why multiple purchases occurred in a single day. Between the period of May 19, 2017 and May 25, 2017, Respondent made four transactions at Store, totaling \$183.23. That was 51% of Respondent's FAP benefit issuance in May 2017. That type of transaction history is indicative of trafficking and does not correspond with Respondent's explanation of her expenditure history 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 court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this is Respondent's first IPV, 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; 7 CFR 273.18(c)(2).

As discussed above, the Department presented clear and convincing evidence that Respondent trafficked FAP benefits. The transactions identified as trafficking were in the amount of \$567.23. Thus, the Department established Respondent was not entitled to FAP benefits in the amount of \$567.23.

DECISION AND ORDER

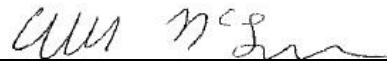
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent trafficked FAP benefits in the amount of \$567.23.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$567.23, less any amounts already recouped/collected, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified 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-15-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

██████████
████████████████████
████████████████████