



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: February 25, 2020
MOAHR Docket No.: 19-012248
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 24, 2020, from ██████████ Michigan. The Department was represented by Jenna McClellan, 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. Is 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 Food Assistance (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 November 4, 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 on her own case.
4. Respondent **was** aware of the responsibility to use her FAP benefits only for lawful purpose and to not traffick benefits through use of another recipient's FAP EBT card.
5. The FAP EBT card used by Respondent was issued to [REDACTED] who died on [REDACTED] 2018. [REDACTED] prior to her death was the only person listed in her household and FAP group. A Mid-Certification Contact Notice was completed in the [REDACTED] case on July 2018 (after her death). A phone number was provided listed as [REDACTED]. [REDACTED] EBT card continued to be used after her death. The Notice also indicates that [REDACTED] moved in with her daughter [REDACTED] on July 1, 2018 and listed [REDACTED] address in [REDACTED] Michigan. [REDACTED] was deceased at the time of this reporting.
6. The Respondent [REDACTED] completed an on-line application on January 24, 2018 and listed an address in [REDACTED] at [REDACTED] [REDACTED] and listed her phone number as [REDACTED]. This is the same address and phone number listed on the Mid Certification Contact Notice. The online application advised Respondent regarding trafficking of FAP benefits and penalties for trafficking.
7. After [REDACTED] death her EBT card was used 86 times (86 transactions) beginning [REDACTED] 2019 ([REDACTED] [REDACTED] after her death) through September 30, 2018. The card used to make the purchases was the card issued to [REDACTED] when living and a new card was issued after the Mid Certification Notice which was also used.
8. The phone number [REDACTED] was used to make balance inquiries after [REDACTED] date of death. Six of the inquiries were made from [REDACTED] the number listed on Respondent's FAP application as belonging to [REDACTED].
9. The Respondent used her phone to make balance inquiries regarding the balances remaining on the deceased's EBT card. Exhibit A, p. 37
10. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
11. The Department's OIG indicates that the time period it is considering the fraud period is February 23, 2018 through September 30, 2018 (fraud period).

12. During the fraud period, Respondent used a FAP card not issued to her and purchased \$1,174.98 in food items with the card. The Respondent was not the owner of the card, was not a member of [REDACTED] FAP group at any time and [REDACTED] was deceased at all relevant times the EBT card was used during the fraud period.
13. The Department alleges that it is entitled to recoup/collect FAP benefits in the amount of \$ 1,174.98
14. This was Respondent's first alleged IPV.
15. 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 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. 1.

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 (January 2018), p. 8; 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. 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.

Trafficking is (i) the buying, selling or stealing 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; (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits; and (iv) attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food. BAM 700 (October 2016), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (October 2015), p 66. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (October 2015), p. 3. 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.

In this case, the Department has alleged that the Respondent, who is the daughter of [REDACTED] used her mother’s EBT card after her death on [REDACTED] 2018 for seven months. The evidence presented established that the Respondent was never a member of [REDACTED] group, had her own open FAP case with the Department and was not authorized by [REDACTED] to use her EBT card. Thus the use of the EBT card was unauthorized. The evidence presented by the Department clearly established that Respondent had possession of the card as her phone number was inputted to the EBT card balance inquiry telephone line on six occasions using Respondent’s phone number of record listed on her own FAP application which she filed online on January 24, 2018. Exhibit A, pp. 37 and 42. In addition, the Department presented a Mid-Certification Contact Notice sent to [REDACTED] on July 2, 2018, [REDACTED] after her death, which was completed and submitted to the Department on July 9, 2018 for [REDACTED] even though she was deceased. Exhibit a, pp. 16-19. On the Mid-Certification Notice the form indicates a change in address for [REDACTED] to [REDACTED], [REDACTED], MI [REDACTED] the address for Respondent. In addition, the Mid Certification Notice contains a Penalty Warning to not give false information, or attempt to use someone else’s food assistance or bridge cards for your household. The form is signed with two XXs and lists Respondent’s phone number. The last date [REDACTED] card was used was September 30, 2018. Exhibit A, p.33.

The Department also presented the IG-311 for [REDACTED] EBT cards which demonstrated that her EBT card was first used after her death on [REDACTED] 2018 (10 days after [REDACTED] death for a total of 86 transactions totaling \$1,174.98. Exhibit A, pp. 25-29. A new card was issued on July 29, 2018 to [REDACTED] after completion of the Mid-Certification which card was sent to Respondent’s address and which was used until September 2018. The only representative authorized on Petitioner’s EBT card last used the card in 2010 and the card number does not appear on any of the transactions made after [REDACTED] death.

After a thorough review of the evidence presented it is determined that the Department has shown by clear and convincing evidence that Respondent did use her deceased mother’s EBT card and used the benefits for her own use without authorization and as such trafficked the benefits. In addition, the Mid-Certification Notice was completed on Respondent’s mother’s behalf even though her mother was deceased. This certification was accomplished so as to allow Respondent to continue to use the FAP benefits of her deceased mother. In addition, the EBT cards ending in [REDACTED] and the new card issued after the Mid Certification were used for months after [REDACTED] death covering 86 transactions. The new EBT card was also sent to [REDACTED] at her daughter’s address. Thus based on this evidence the Department has established by clear and convincing evidence that the Respondent trafficked the FAP benefits when she used the FAP benefits of another without the person’s permission, and was not an authorized person on the card and was not a member of the deceased recipient’s FAP group and did so for her own benefit to obtain FAP benefits she was not entitled to receive.

Disqualification

A client who is found to have committed a 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. 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. 15.

In this case, The Department has satisfied its burden and has demonstrated an IPV for trafficking was committed by Respondent by clear and convincing evidence and thus is entitled to a finding of disqualification of Respondent who is subject to a one year disqualification as this is Respondent's first IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Department established that the Respondent trafficked \$1,174.98 of her deceased mother's FAP benefits during the period February 23, 2018 through September 30, 2018. Department policy provides:

The amount for trafficking-related IPV's is the value of the trafficked benefits (attempted or actually trafficked) as determined by:

- The court decision.
- The individual's admission.
- 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. This can be established through circumstantial evidence. BAM 720, (January 1, 2016) p. 8

Based upon the evidence presented and a review of the Respondent's actions in this case which demonstrated by clear and convincing evidence that an IPV occurred through unauthorized use of ██████ card, it is determined that the Department has established that it is entitled to recoup or collect \$1,174.98 in trafficked FAP benefits from the Respondent.

DECISION AND ORDER

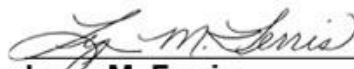
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV for trafficking FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,174.98 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of 12 months.

LMF/jaf



Lynn M. Ferris
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]
[REDACTED]
[REDACTED] MI [REDACTED]