



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 28, 2020
MOAHR Docket No.: 19-012277
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 19, 2020 from ██████████ Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG) and Julie Price, also a Regulation Agent for OIG. The Respondent was self-represented.

ISSUES

1. Has the Department established a claim for trafficked Food Assistance Program (FAP) benefits?
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 November 5, 2019, seeking to establish a claim and disqualify Respondent from FAP based upon an IPV by trafficking.

2. Respondent was a recipient of FAP benefits issued by the Department.
3. Respondent **was** aware of the responsibility not to buy, sell, trade, exchange, or otherwise traffic FAP benefits.
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 October 2015 through June 2017 (fraud period).
6. The Department is seeking to establish a claim for trafficked FAP benefits in the amount of \$3,255.15.
7. This was Respondent's **first** alleged IPV.
8. 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 OIs 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. 5, 12-13; ASM 165 (August 2016).

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. 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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 of FAP because she trafficked \$3,255.15 of her FAP benefits at [REDACTED] (Store). Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (October 2015), p. 2; see also Department of Health and 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 established that it adequately notified Respondent at the time of Application that she could not traffick her FAP benefits.

Store was disqualified from participation in the Supplemental Nutritional Assistance Program (SNAP) by the United States Department of Agriculture Food and Nutrition Service (FNS) effective September 6, 2017 after investigation during the period December 2016 through August 2017. SNAP is the federal name for the FAP. FNS charged store with trafficking FAP benefits based upon the following considerations:

- Multiple transactions made from the same FAP accounts in unusually short time frames
- Excessively large purchase transactions given the size, nature, and inventory of Store

To support its position that Store was trafficking benefits, Food and Nutrition Service (FNS) completed an investigation finding that Store is 400 square feet in size and has a limited selection of soft drinks, juice, water, candy, nuts, chips, and ice cream. Store has an even more limited selection of canned goods and condiments. In addition, Store sells a few automotive supplies and lottery tickets and an even smaller quantity of bread, baking supplies, and dairy products. The most expensively priced item in Store was a box of Captain Crunch cereal for \$5.99. Store does not have any meat (except jerky) or seafood. Store does not have shopping carts, baskets, or optical scanners to facilitate large transactions or transactions in quick succession. In addition, Store has a plastic barrier or night window with two cash registers and EBT point-of-sale devices. Both the cash registers and point-of-sale devices are used through one checkout counter. Finally, Store does not have an area for storage of inventory away from the public view. In reviewing Store’s transactions, FNS determined that Store’s EBT transactions greater than \$24.89 were trafficked transactions. Based upon its investigation, FNS disqualified Store from participating in the SNAP program.

Although Store trafficked benefits, the Department must show that Respondent participated in the trafficking at Store. The Department presented Respondent’s transaction history from Store as well as her complete EBT transaction history.

Respondent had more than 70 transactions at Store flagged for trafficking by the Department. The flagged transactions began at Store on October 21, 2015 and continued through June 13, 2017. During this period, Respondent completed transactions at Store as high as \$76.89 and \$76.26 on back-to-back days. Respondent also has an unusual pattern of shopping at Store. For example, on October 11, 2015, Respondent spent \$40.00 at Store at 11:21 AM, then went to two other gas stations on the same day in the next four hours spending a combined \$6.89 in three transactions, then went back to Store at 3:30 and spent \$39.66, then left and went to four other gas stations and party stores by 10:39 PM spending a combined \$19.94 at the four additional stores. On November 9, 2015, Respondent started her day at a gas station spending \$1.25 at 9:14 AM, then went to Store and swiped her card for \$0.79 and three minutes later again for \$59.22, left Store, visited a gas station and another store spending \$31.44, went back to Store at 8:02 PM spent \$54.16, left and went to three other stores spending a combined \$39.47 even though one of those last three stores was a Meijer. Meijer is a traditional large-scale grocery retailer known for a wide variety of items, qualities, and pricing. On December 9, 2015, Respondent visited one gas station spending \$1.19, then went to Store three hours later and spent \$61.97 in two transactions one minute apart. After leaving Store, Respondent went to a wholesale meat retailer, three other gas stations, Meijer, and Sam's Club. Two days later, she went back to Store and spent \$35.12. Respondent's combined transactions at Store in these three days were more than she spent at Meijer even though Store is only a 400-square-foot gas station but Meijer is a multi-thousand-square-foot grocery retailer. Respondent repeats this unusual pattern of activity through the entire fraud period.

At the hearing, Respondent testified that she drives around town with her significant other and he makes repeated stops at gas stations or party stores to buy loosies (individual cigarettes) because he cannot afford a full pack of cigarettes. When he makes these stops, she buys snacks and drinks from the Store. While this explains some of Respondent's transactions, it does not explain the majority of the transactions, especially those made back-to-back and in large-dollar amounts. In addition, it presents a question of why she would spend over \$60.00 at Store knowing that she was going to Sam's Club and Meijer on the same day where she could buy the same snacks and drinks in bulk for a better price. Finally, it also raises the question of why Respondent was repeatedly at this gas station spending large sums of money but not spending the same or similar amounts of money at other gas stations. During the period in question, Respondent lived on the far west side of Detroit near Dearborn, Michigan and Store is on the far east side of Detroit near Grosse Pointe, Michigan. The distance between these two areas of Detroit is approximately 15 miles and there are hundreds of gas stations, party stores, and grocery retailers between where she was living and Store. Despite the distance, Respondent visited Store every month around the time of or on the date that she would receive her FAP allotment on the EBT card. She then went to this store specifically and spent large sums of money, again at a 400-square-foot gas station more than 15 miles from her home.

Based upon the evidence presented, Respondent's explanation of events is not credible. Respondent was trafficking FAP benefits at Store. The Department has met its burden of proof in establishing an IPV by clear and convincing evidence.

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)(1) and (5). A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This is Respondent's first IPV. Therefore, she is subject to a period of disqualification from FAP for one year.

Recoupment or Collections

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup that amount. BAM 700, p. 1; 7 CFR 273.18(c)(2). The OI amount for a trafficking-related IPV is the value of the trafficked amount as determined by an administrative hearing decision, repayment and disqualification agreement, or court decision. BAM 720, p. 8; 7 CFR 273.18(c)(2).

As discussed above, the Department presented clear and convincing evidence to support its allegation that Respondent trafficked FAP benefits at Store. In reviewing her IG-312 EBT History, Respondent completed \$3,255.15 worth of transactions at Store, which were found to be trafficked FAP benefits as discussed above. Therefore, the Department has met its burden of proof in establishing a claim for trafficked FAP benefits in the amount of \$3,255.15.

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. The Department **has** established a claim for trafficked FAP benefits in the amount of \$3,255.15.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$3,255.15 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



AMTM/jaf

Amanda M. T. Marler
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
MDHHS- [REDACTED] Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]