



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: October 30, 2020
MOAHR Docket No.: 20-003011
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 October 21, 2020, from Lansing, Michigan. The Department was represented by Craig Baylis, Regulation Agent of the Office of Inspector General (OIG).

Department's Exhibit A, pages 1-39 were admitted as evidence.

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. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for Food Assistance Program?

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 May 11, 2020, 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. The Department alleges that CE sold/traded her Bridge Card/FAP benefits to Respondent for drugs.
4. The investigation identified CE as a drug supplier and Respondent as using CE's Bridge Card in unauthorized fashion.
5. On April 9, 2019, CE contacted the Department to report a lost BRIDGE card.
6. On April 9, 2019, Respondent attempted to use CE's Bridge card in Arizona, but it was declined in the amount of -\$19.21.
7. Respondent **was** aware of the responsibility not to use the BRIDGE card of another person because she was not the authorized user of the card.
8. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
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 Service as undeliverable.

CONCLUSIONS OF LAW

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 IPV 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 overissuance 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 instance of an IPV. Therefore, a 12-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).

The Regulation Agent indicated in his report:

On May 7, 2020, I interviewed [REDACTED] by phone. I explained the reason for my call and she verified her identity and also advised that she was being evicted from her home, but that I could send mail to her address in [REDACTED], that her daughter would be receiving mail. We had a frank discussion regarding her

current status and her drug use prior to getting into the details of the case. I had referred to her selling Meth and she stated, "Yeah, everyone knows that." We continued the discussion regarding the Bridge Card. I asked [REDACTED] if she knew client and she responded, "I know [REDACTED] but not by her last name." I then asked why she had client's EBT card in Arizona, to which she responded, "She owed me money." I asked if it was for drugs, specifically Meth and she said, "No. I loaned her money and she owed me back. She always paid cash for drugs." We continued with some more discussion and then I explained the process for addressing the allegations. I explained that since she had only attempted to use the benefits and was unable to access the funds that she would be facing a disqualification. She responded, "Just close my case and leave me alone."

This Administrative Law Judge finds that the Department has established by the necessary competent, substantial and material evidence on the record that Respondent attempted to use FAP benefits in an unauthorized manner as a result of attempted/solicitation/trafficking of (SNAP) FAP benefits. The evidence on the record establishes that Petitioner committed an Intentional Program Violation by clear and convincing evidence on the record.

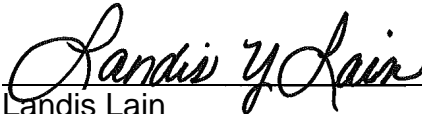
DECISION AND ORDER

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 over-issuance of Food Assistance Program benefits in the amount of \$19.21.

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

LL/ml



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

Lacy Miller
Clinton County DHHS – via electronic mail

MDHHS Recoupment – via electronic mail

L. Bengel – via electronic mail

Petitioner

OIG – via electronic mail
P.O. Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED] – via first class mail
[REDACTED], MI [REDACTED]