



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: November 16, 2020
MOAHR Docket No.: 20-003719
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

HEARING DECISION
FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent Tara Williams committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits. Pursuant to MDHHS' request for hearing and MCL 400.9, 7 CFR 273.16 and 7 CFR 273.18, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on November 10, 2020.

Darren Bondy, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

Department's Exhibits 1-15 (pages 1-135) were admitted as evidence.

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Has MDHHS established a recipient claim against Respondent for \$504 based on FAP benefits trafficked by Respondent?

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 June 4, 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. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill FAP use requirements.
5. Respondent was a FAP recipient and had completed a Redetermination Application, DHS-1010, for Food Assistance Program (FAP) benefits, at which time Respondent acknowledged rights and responsibilities, as well as understanding of the FAP trafficking rules and regulations
6. The Department's OIG indicates that the time period it is considering the fraud period is September 1-September 30, 2018 (fraud period).
7. During the fraud period, Respondent was issued \$504 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$504.
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was** returned October 23, 2020, by the United States Postal Service as undeliverable.
11. Respondent did not appear and give evidence at the scheduled hearing to rebut the evidence presented by Petitioner in the Hearing Summary and admitted exhibits.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3015.

Trafficking and IPV Disqualification

MDHHS alleges that Respondent committed an IPV by trafficking FAP benefits and requests that Respondent be disqualified from FAP eligibility. IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP federal] regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of [FAP] benefits or EBT [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2) and (e)(6). Trafficking includes buying, selling, stealing, or otherwise effecting, or attempting to buy, sell, steal or otherwise effect, “an exchange of [FAP] benefits issued and accessed via [EBT] cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” 7 CFR 271.2.

To establish an IPV by trafficking, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720. Clear and convincing evidence is evidence sufficient to result in “a firm belief or conviction as to the truth of the precise facts in issue.” *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. The clear and convincing standard is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).

In this case, the evidence on the record indicates:

On September 14, 2018 the Genesee County Sheriff’s Department (GCSD) executed a search warrant at the [REDACTED], MI [REDACTED]. In the course of their search warrant GCSD recovered over \$300,000 in currency and negotiable instruments. Financial transaction devices separate from those previously mentioned were identified by the search team as Michigan BRIDGE cards that are used to purchase food through the electronic benefit transfer – supplemental nutrition assistance program. The BRIDGE cards were issued by the State of Michigan Department of Health and Human Services for the sole and exclusive use of specific individuals to purchase SNAP eligible food items for themselves and or their authorized household group. The State of Michigan BRIDGE cards recovered included one for Respondent.

The owner of the [REDACTED], [REDACTED], is not an authorized SNAP retailer, nor is he an authorized representative user for any of the individuals that had their BRIDGE cards seized at the time of the search warrant.

█████ and one of his employees were arrested at the time of the search warrants execution.

On September 14, 2018, and September 15, 2018, █████ spoke with investigators from GCSD having waived his Miranda Rights, and agreed to speak with the investigators Sergeant (Sgt.) Rodolfo Lopez and Captain (Capt.) Robert Heath without an attorney present.

During the interview █████ was candid with his responses, explaining to the interviewers his culpability and facilitation for the criminal acts. Reid was questioned by investigators specifically about The State of Michigan BRIDGE cards recovered at his business.

█████ was asked if he purchased the bridge cards for that were found inside of the █████ stated, "I take them in for collateral or sometimes I have used them." █████ explained that he buys bridge cards from people for .50 cents on the dollar in cash paid directly to the grantee, and then █████ would use the bridge cards to purchase items for his home or the █████ such as "cranberry juice and stuff like that."

Based on the interview with Respondent, it was evident by her own admission that she had engaged benefit program fraud (trafficking), which is in violation of MDHHS/USDA policy and regulation. Respondent engaged in this behavior by exchanging, giving, and trading her BRIDGE/EBT card at the █████ for cash or other consideration.

This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card (7 CFR 273.16(c), MCL 750.300a, 7 U.S.C. 2016, DHS-Pub-322, DHS-Pub-1010, BAM 401E).

On October 31, 2018, Agents Bondy and Ellis briefly spoke with Respondent at █████ at her residence, █████ MI █████ After being advised of the identity of the interviewing agents and the purpose of the interview, Respondent stated "On one occasion Respondent allowed her boyfriend, JG, to take her State of Michigan Bridge card to the owner of the F █████, █████ (█████ for █████ to use. Respondent allowed this because JG owed █████ \$ 100.00 and was "out of money" so JG gave █████ the Bridge card to use to pay off his debt to █████

It was determined that the grantee gave/sold/traded/exchanged BRIDGE/EBT benefits that were issued to her for the sole and exclusive use of her household group for food items authorized under the SNAP/FAP program.

Under the facts presented, MDHHS has established by clear and convincing evidence that Respondent trafficked FAP benefits. Thus, Respondent did commit an IPV. An

individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b).

Repayment

A party is responsible for a recipient claim to MDHHS in an amount equal to the value of trafficked benefits. 7 CFR 273.18(a)(ii). The value of the trafficked benefits is determined by (i) the individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination. 7CFR 273.18(c)(2). Documentation used to establish the trafficking determination can include 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.

Here, MDHHS seeks repayment from Respondent of \$504, the amount of the alleged trafficked benefits. The Department as established this case by the necessary competent, substantial and material evidence on the record. The evidence presented by MDHHS was sufficient to establish a valid recipient claim for \$504.

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. Because MDHHS has established by clear and convincing evidence that Respondent committed an IPV, Respondent is subject to a FAP disqualification.
2. Respondent is responsible to MDHHS for a recipient claim of \$504 for trafficked FAP benefits.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP recipient claim in the amount of \$504, less any amounts already recouped/collected, for the fraud period.

IT IS FURTHER ORDERED that Respondent be personally disqualified from the Food Assistance Program for a period of 12 months.

LL/hb



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

Genesee County (Clio), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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