



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: December 14, 2020
MOAHR Docket No.: 20-004991
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (Department) requested a hearing alleging that Respondent, [REDACTED] committed an Intentional Program Violation (IPV). Pursuant to the Department's request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on December 10, 2020. Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4); Mich Admin Code, R 400.3130(5); or Mich Admin Code, R 400.3178(5).

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 July 6, 2020, 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 aware of the rules and regulations regarding the use of 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 7, 2018 through December 15, 2018 (fraud period).
6. During the fraud period, the Department alleges that Respondent trafficked \$515.71 in FAP benefits.
7. The Department alleges it is entitled to recoup/collect FAP benefits in the amount of \$515.71 from Respondent.
8. This was Respondent's first alleged IPV.
9. 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

The Department's policies are contained in the Department's 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 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. The Department 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 400.3031.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 to 42 USC 1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10 to 42 CFR 430.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Intentional Program Violation

An IPV occurs when a recipient of Department benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, the Department's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is committed by a state government employee. BAM 720 (October 2017), pp. 12-13.

To establish an IPV, the Department 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, p. 1. 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. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. 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). For an IPV based on inaccurate reporting, Department policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. 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). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). 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; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (May 2014), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 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 (July 2015), p. 3. The federal regulations define trafficking to include "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit

Transfer (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.

In this case, the Department alleges that Respondent committed an IPV by purchasing food with an incarcerated individual's FAP benefits without consent. In support of its contention that Respondent committed an IPV, the Department presented a Book Card report from the Wayne County Sheriff's Office showing that an individual by the name of [REDACTED] became incarcerated as of September 21, 2018. [REDACTED] was released from incarceration on January 18, 2019.

The Department also presented [REDACTED] IG-311 EBT History report showing his FAP purchases by time, date and location during the period of October 7, 2018 through December 15, 2018. The document shows that [REDACTED] FAP benefits were used to make a multitude of purchases, including two purchases at [REDACTED] on October 10, 2018 and November 8, 2018.

The Department presented information retrieved from [REDACTED] regarding the two purchases completed with [REDACTED] FAP card on October 10, 2018 and November 8, 2018. The documents show that the [REDACTED] membership utilized to complete the transactions was Respondent's [REDACTED] membership. The information provided by [REDACTED] also shows that the phone number listed on Respondent's [REDACTED] membership was [REDACTED]. The Department also provided the receipts from the [REDACTED] transactions. The receipts show that significant amounts of perishable items were purchased on both transaction dates.

The Department also provided [REDACTED] Electronic Payment Processing Information Control (EPPIC) report showing all of the balance inquiries made on his FAP account during the fraud period. The Department also provided documentation showing that the phone number utilized to make all of the balance inquiries during the fraud period were connected to a phone number listed as [REDACTED]. Additionally, the Department presented a CLEAR report for Respondent showing that his phone number is [REDACTED].

The Department testified that an interview was conducted with [REDACTED] on [REDACTED], 2019. [REDACTED] confirmed that he was incarcerated during the fraud period. [REDACTED] stated that he did not allow anyone to use his FAP benefits during his incarceration and did not know that his FAP benefits were being utilized during the fraud period. [REDACTED] indicated that his wallet had been stolen prior to his incarceration and that his FAP benefit card was in the wallet. [REDACTED] also stated that his FAP benefit card PIN number was also in his wallet.

The Department presented clear and convincing evidence that Respondent was the individual using [REDACTED] FAP benefits. It is evident that Respondent did not have authorization to utilize the FAP benefits from the account holder, nor was he purchasing food on his behalf. Respondent's unlawful appropriation of [REDACTED] FAP benefits

is evidence that Respondent committed an IPV. Thus, the Department provided clear and convincing evidence that Respondent trafficked FAP benefits and committed an IPV.

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; BEM 708 (October 2016), p. 1. 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; 7 CFR 273.16(b). 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. 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 the receipt of FAP benefits.

Recoupment/Collection

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

As discussed above, the Department presented clear and convincing evidence to support its allegation that Respondent trafficked [REDACTED] FAP benefits by unlawfully appropriating the funds. The Department identified all of the transactions that occurred during [REDACTED] period of incarceration. These transactions total \$515.71. Therefore, the Department is entitled to recoup and/or collect \$515.71 for trafficked FAP benefits during the fraud period.

DECISION AND ORDER

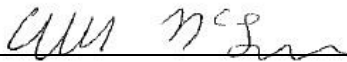
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$515.71 from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI amount of \$515.71, less any amount already recouped and/or collected.

It is FURTHER ORDERED that the Department personally disqualify Respondent from FAP for a period of 12 months.

EM/jem


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-17-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent - Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]