



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: November 27, 2018
MAHS Docket No.: 18-007952
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 or State), 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 November 15, 2018, from Lansing, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared at the hearing.

State's Exhibit A, pages 1-76, were admitted as evidence. The record closed at the conclusion of the hearing.

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 Food Assistance Program (FAP) benefits for 12 months?
3. Did the Department establish an over issuance (OI) of FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on July 24, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent received a lump sum payment from the *Barry v. Lyon* settlement in February of 2017. Data mining techniques were used to ensure integrity of the FAP program, and Respondent was identified as conducting transactions usually found to be indicative of trafficking.
3. Respondent received a lump sum payment from the *Barry v. Lyon* settlement which provided him with a large amount of Food Assistance Program (FAP) benefits at one time. Respondent received \$3,120.00 worth of FAP benefits on February 17, 2017.
4. An IG-311 EBT History - FAP Purchases by ID Number report was completed in regards to Respondent after he received the lump sum settlement. There are transactions on the report that are indicative of FAP trafficking from February 23, 2017, to February 24, 2017.
5. On February 23, 2017, there are two separate transactions completed at Sam's Club at two different locations. The first transaction was completed at the Roseville, MI Sam's Club at 11:35 for a transaction amount of \$676.92.
6. Later that day, a transaction was made at Sam's Club in Fairlawn, OH at 19:39 for a transaction amount of \$500.00. The report indicates that both transactions were keyed in and not swiped. On February 24, 2017, there are two separate transactions completed at Gordon Food Services in Clinton Twp, MI.
7. The transactions are for \$358.93 and \$206.62, which were completed a minute apart (at 19:05 and 19:06).
8. On February 24, 2017, there are two separate transactions completed at Kroger in Roseville, MI. The transactions are \$128.23 and \$209.44, which were completed six minutes apart (at 20:09 and 20:15).
9. Due to this Agent receiving this investigation on June 7, 2018, it was not possible to obtain surveillance images/video for the above-listed transactions. However, this Agent was able to obtain specific transaction information for the transaction that took place at Sam's Club in Roseville, MI.

10. The information received from Sam's Club in Roseville, MI indicates that the membership used to complete the transaction belongs to a business called Estell's Treasures. Given the fact that the purchases made on February 23, 2017, at Sam's Club were completed by a business account and the second transaction was completed in the state of Ohio, and the purchases on February 24, 2017, at Gordon Food Services and Kroger were conducted within close times of each other, and the high dollar amount of the purchases, the transactions appear to be fraudulent.
11. Based on this information, along with this Agent's experience as a Benefit Trafficking Agent, it appears that Respondent was purchasing eligible food for other households with his own EBT card in exchange for cash or other unknown consideration, and not for his own household.
12. An EPPIC report was completed in regards to Respondent, and there is no Authorized Representative for his FAP benefits. Respondent did not report a lost or stolen EBT card during this timeframe, nor was there a PIN change on the EBT card.
13. Respondent completed an online Assistance Application requesting FAP benefits on December 2, 2016. By electronically signing the application, Respondent acknowledged that he had received, reviewed, and agreed with the Important Things to Know section of that application, which specifically states "you may also be guilty of fraud/IPV if you trade, attempt to trade or sell your FAP benefits or Bridge card online or in person."
14. There is no known mental or physical impairment for Respondent that would limit his understanding.
15. Respondent does not have any previous Michigan or National IPV Sanctions.
16. Respondent has not contacted the Agent to date regarding this investigation, nor has the interview letter be returned as undeliverable
17. Respondent reported mental impairments or disability.
18. Respondent did appear and give evidence at the scheduled hearing to rebut the evidence presented by Petitioner in the Hearing Summary and admitted exhibits.
19. This was Respondent's first alleged IPV.

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 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 an 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 alleged 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).

In this case the Department put \$3,120.00 in Food Assistance Program benefits on Petitioner's Bridge card in a lump sum payment. The Department determined that Respondent was entitled to receive the lump sum as a result of the *Barry v. Lyon* lawsuit, which Respondent was entitled to receive for December 30, 2012, to January 9, 2015. There is no law or rule presented by the Department at the hearing that states that Petitioner is not allowed to purchase food items in a lump sum purchase or in a series of large purchases or is not to allow family members to purchase food items for him. Though the purchases appear irregular, there is insufficient evidence presented to this Administrative Law Judge that Respondent purchased the large amounts to traffic food items or to attempt to traffic food items. The OIG agent never indicated how such large purchases are indicative of FAP trafficking, beyond the bald statement that such purchases appear irregular. Even when taking the evidence in the light most favorable to the Department, it has not established an FAP trafficking case. There is no evidence of receipts of inappropriate items being purchased.

There is insufficient evidence on the record of this Respondent ever selling or providing items to anyone else or attempting to do so. Walmart, Gordon's, Kroger, and Sam's Club are all stores which have sufficient non-perishable food or grocery items in the stores that make it feasible for Respondent to have purchased over \$2,000.00 worth of groceries or approved food items in two days. Though such purchases would be highly irregular under normal circumstances (because most FAP benefit recipients do not have \$3,000.00 in Food Assistance Program benefits placed on their EBT cards at one time), the Department has not established by clear and convincing evidence that Respondent has committed an Intentional Program Violation, has committed FAP Trafficking, or that Respondent was not entitled to receive the benefits or use them as Respondent saw fit, as long as the purchases were for designated food items. The video evidence was not available and not presented at the hearing. No witnesses from the Department testified from personal knowledge about what occurred. Just because a case is flagged for investigation or large amounts used does not mean that sufficient evidence exists to establish FAP trafficking or attempted trafficking. Respondent was entitled to the benefits and used legitimate stores to make large amount purchases of appropriately designated food items. Respondent alleged that he allowed his grandmother to purchase food items with his card because he and his child stay at his grandmother's from time to time and eat and prepare food there. Respondent also stated that he thought he could spend the FAP benefits immediately because the Department gave it to him. An Authorized Representative or Respondent had the right to purchase food stuffs. The Department's case cannot be upheld under the circumstances.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department has not established by clear and convincing evidence that Petitioner trafficked or attempted to traffic Food Assistance Program benefits.
3. The Department has not established by clear and convincing evidence that Respondent was not entitled to spend Food Assistance benefits in the fashion that Respondent wanted to as long as the purchases were for approved food items.
4. The Department has not established by clear and convincing evidence that Respondent failed to purchase approved food items.
5. The Department's request for recoupment of \$2,080.14 is **DENIED**.
6. The Department's request for a 12-month disqualification and an intentional program violation is **DENIED**.

LL/dh



Landis Lain
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

LaClair Winbush
17455 Grand River
Detroit, MI 48227

Wayne County (District 31), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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