



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: November 30, 2018
MAHS Docket No.: 18-009206
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on November 29, 2018, from Lansing, Michigan. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

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 the Food Assistance Program (FAP)?
3. Does Respondent owe the Department a debt for the value of FAP benefits trafficked?

FINDINGS OF FACT

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

1. Respondent applied for FAP benefits from the Department, and the Department granted Respondent's application. The Department issued Respondent a pamphlet titled Important Things to Know and a brochure on how to use her EBT Bridge Card.

2. The Important Things to Know pamphlet advised Respondent that she may not use her FAP benefits to purchase anything other than eligible food items and that she may not trade or sell her benefits.
3. The brochure on how to use an EBT Bridge Card advised Respondent that misuse of food benefits is a violation of law, including allowing a retailer to buy FAP benefits in exchange for cash.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
5. From May 2015 through March 2017, Respondent used her FAP benefits to complete EBT transactions at [REDACTED] [REDACTED] in Jackson.
6. [REDACTED] [REDACTED] was a gas station doing business as a Marathon. [REDACTED] [REDACTED] was located in a suburban area and had approximately 840 square feet of retail space, no carts or baskets, limited food inventory, limited non-food inventory, tobacco, and fuel.
7. The United States Food and Nutrition Service (FNS) conducted an investigation of [REDACTED] [REDACTED]
8. On March [REDACTED] 2017, the FNS notified [REDACTED] [REDACTED] that it suspected the business of FAP trafficking from April 2016 through September 2016 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
9. On May [REDACTED] 2017, the FNS notified Meezo Express that FNS had determined the store engaged in FAP trafficking and that it was permanently disqualified from participating in Supplemental Nutrition Assistance Program (SNAP) as a result.
10. The Department conducted an investigation of Respondent's EBT transactions at [REDACTED] [REDACTED] and determined that she completed EBT transactions which were indicative of trafficking because they were excessively large, they ended in even dollar amounts, and they occurred within close proximity of each other. The Department concluded the transactions were excessively large in part because they exceeded the amount of the smallest transaction FNS considered excessively large.
11. On [REDACTED] [REDACTED] [REDACTED] the Department's OIG filed a hearing request to establish that Respondent committed an IPV by trafficking her FAP benefits and that she owed the Department the value of the FAP benefits she trafficked.
12. The OIG requested recoument of \$ [REDACTED] for the value of FAP benefits trafficked, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

13. A notice of hearing was mailed to Respondent at her last known address, and it 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), and Reference Tables Manual (RFT).

The Supplemental Nutrition Assistance Program (SNAP) is a federal created program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its food assistance program pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Intentional Program Violation

An intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c).

Trafficking means:

- (1) 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;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(e)(6) and BAM 720, p. 1. Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent completed EBT transactions at Meezo Express, which was a retailer known to engage in the trafficking of FAP benefits. Respondent completed EBT transactions at [REDACTED] [REDACTED] which were excessively high considering the size of the store and its inventory of eligible food items. Respondent also completed transactions which were indicative of trafficking because they ended in an even dollar amount and because they occurred within close proximity of each other. Respondent's transactions were consistent with an individual completing EBT transactions to obtain items other than eligible food items, and Respondent did not provide a legitimate explanation for her transactions. The Department presented clear and convincing evidence that Respondent's EBT transactions at [REDACTED] [REDACTED] were for cash or consideration other than eligible food items, either directly, indirectly, in complicity or collusion with others, or acting alone. Therefore, Respondent's conduct meets the definition of trafficking in 7 CFR 271.2.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a 12-month disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, Respondent engaged in trafficking when she completed EBT transactions at Meezo Express. The Department present sufficient evidence to establish that Respondent trafficked FAP benefits valued at \$2,080.50. Thus, Respondent owes the Department \$2,080.50 for the amount she trafficked.

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 should be disqualified from FAP.
3. Respondent owes the Department \$ [REDACTED] for the value of FAP benefits she trafficked.

IT IS ORDERED THAT the Department may initiate recoupment procedures to collect the \$ [REDACTED] debt Respondent owes the Department for the benefits she trafficked.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 12 months.

JK/nr



Jeffrey Kemm
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

Denise Croff
301 E. Louis Glick Hwy.
Jackson, MI
49201

Jackson County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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