



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 1, 2019
MAHS Docket No.: 18-011157
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 February 25, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 123 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-123.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
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 FAP benefits?

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 filed with the Department an application for FAP benefits on [REDACTED] 2013. Exhibit A, pp. 85-118.
2. As part of the application process, Respondent certified that she had received, reviewed, and agreed with the information in the assistance application Information

Booklet, including the Important Things to Know publication (DHS-PUB-1010). Exhibit A, p. 99.

3. DHS-PUB-1010 advised Respondent that trading or selling FAP benefits was considered FAP trafficking and that such action violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 106-107.
4. Respondent did not have any mental or physical impairment that would limit her understanding or ability to fulfill her obligations regarding her FAP benefits. Exhibit A, p. 91.
5. At some point, the United States Food and Nutrition Service (FNS) conducted an investigation of a store named [REDACTED]. At the conclusion of the investigation, FNS issued to [REDACTED] a June 1, 2015, letter informing the store that it was permanently disqualified from FAP as a result of FNS' finding that the store had engaged in FAP trafficking. Exhibit A, pp. 11-77.
6. As a result of FNS' finding that [REDACTED] engaged in widespread FAP trafficking, the Department conducted an investigation into some of the clients who made purchases at the stores.
7. From November 3, 2014, through March 5, 2015, Respondent made numerous purchases at [REDACTED] eleven of which were flagged by the Department as fraudulent due to meeting the Department's criteria for trafficking at that particular store. Exhibit A, pp. 46-48; 78-79.
8. On October 23, 2018, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by engaging in eleven fraudulent transactions at [REDACTED] from November 3, 2014, through March 5, 2015, totaling \$[REDACTED] Exhibit A, pp. 1-9.
9. The Department's OIG indicates that the time period it is considering the fraud period is November 3, 2014, through March 5, 2015. Exhibit A, pp. 1-9.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$[REDACTED] Exhibit A, pp. 1-9.
11. This was Respondent's first alleged IPV, and the OIG requested Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-9.
12. The Notice of Hearing sent to Respondent's most recent address on file was not returned 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), 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.

The Department has alleged that eleven of Respondent's purchases at [REDACTED] during the alleged fraud period were instances of trafficking. The Department is seeking an order finding Respondent committed an IPV with respect to FAP and requiring Respondent to repay the amount trafficked.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (May 2014), p. 1. Trafficking is defined as buying, selling, or stealing FAP benefits for cash or consideration other than eligible food. BAM 700 (May 2014), p. 2; 7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273(e)(6). 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, the Department has not met its burden. After an investigation, FNS determined that [REDACTED] engaged in wide-ranging fraud with respect to accepting and redeeming FAP benefits. The investigation showed that [REDACTED] had limited food inventory, no carts or baskets, and a bulletproof barrier that would have made it difficult to carry out large transactions. The Department established that Respondent made eleven suspicious transactions at [REDACTED].

Respondent, however, credibly testified that she only purchased eligible food products at [REDACTED] and the Department had no direct evidence to contradict Respondent's claims. Respondent's credible and consistent testimony was sufficient to rebut the presumption and prevent the forming of a firm belief that Respondent, in fact, engaged in FAP trafficking. Accordingly, the Department failed to establish by clear and convincing evidence that Respondent engaged in unlawful FAP trafficking.

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, pp. 15-16; 7 CFR 273.16(b). In general, Clients are disqualified 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.

In this case, the Department did not establish that Respondent committed an IPV. Thus, Respondent is not subject to disqualification.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7 CFR 273.18. The OI amount for trafficking-related IPV's is the value of the trafficked benefits as determined by: (1) a court decision; (2) the individual's admission; or (3) 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. BAM 720, p. 8; 7 CFR 273.18(c)(2). In this case, the Department did not establish that Respondent was overissued benefits because the Department did not establish that Respondent trafficked benefits as alleged by the Department.

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. Respondent did not receive an OI of FAP.
3. Respondent is not subject to disqualification from receiving FAP benefits.

IT IS ORDERED that the Respondent is not disqualified from receiving FAP benefits.

IT IS FURTHER ORDERED that Department shall delete the alleged FAP overissuance.

JM/cg



John Markey
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 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

Via Email:

MDHHS-Wayne-57-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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