



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: September 30, 2019
MOAHR Docket No.: 19-008620
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 September 25, 2019, from Lansing, Michigan. The Department was represented by Jennifer Allen, Regulation Agent of the Office of Inspector General (OIG). Respondent, Rosa Valdez, appeared with her witness, Manuel Valdez.

One exhibit was admitted into evidence during the hearing. A 72-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

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 approved Respondent for FAP benefits. The Department issued an electronic

benefit transfer (EBT) card known as a "Bridge Card" to Respondent to make purchases of eligible food items from authorized retailers.

2. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her responsibilities to the Department.
3. From January 2013 through November 2014, Respondent used her FAP benefits to complete EBT transactions at [REDACTED]. Respondent completed single transactions at [REDACTED] that were as large as \$235.38 (January 11, 2013), and Respondent completed multiple transactions within 24 hours at [REDACTED] that totaled as much as \$348.90 (January 11, 2013). Respondent's EBT transactions at [REDACTED] from January 2013 through November 2014 totaled \$2,783.02.
4. Respondent had large transactions in January 2013 because she purchased food to host a party.
5. [REDACTED] was a retail store which accepted EBT. [REDACTED] had approximately 2,500 square feet of retail space, no shopping carts, limited baskets, and no optical scanners. [REDACTED] had an inventory of food and a restaurant with several seats.
6. The United States Food and Nutrition Service (FNS) conducted an investigation of [REDACTED]. The FNS discovered that [REDACTED] had multiple EBT transactions from individual benefit accounts in unusually short time frames and excessively large EBT purchase transactions.
7. On May 25, 2018, the FNS notified [REDACTED] that it suspected the business of FAP trafficking from December 2017 through April 2018 and that it was charging the business with trafficking pursuant to 7 CFR 271.2.
8. On June 18, 2018, the FNS notified [REDACTED] 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.
9. The Department investigated transactions completed at La Mexicana. During the Department's investigation, the Department interviewed individuals who completed suspicious EBT transactions at [REDACTED], and the Department learned that [REDACTED] would permit those individuals to use their FAP benefits to pay for ineligible items such as hot food and household supplies. The Department discovered that Respondent completed EBT transactions at [REDACTED], and the Department determined that Respondent's EBT transactions were indicative of trafficking because they were either excessively large or completed within an unusually short time period. The Department determined that Respondent completed transactions totaling \$518.75 from January 2013 through November 2014 which were indicative of trafficking.

10. The Department attempted to contact Respondent to obtain an explanation for her EBT transactions at [REDACTED]. Respondent did not initially respond to the Department's attempt to obtain her explanation.
11. On August 2, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department for the value of FAP benefits she trafficked.
12. Respondent contacted the Department after it received the hearing request. Respondent asserted that she did not obtain anything other than eligible food items with her FAP benefits.
13. The OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV, and the OIG requested that Respondent be ordered to pay \$518.75 for the value of FAP benefits she trafficked.
14. 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 not met its burden. Although Respondent completed EBT transactions at [REDACTED], which was a retailer known to engage in the trafficking of FAP benefits, Respondent denied that she obtained anything other than eligible food items in exchange for her FAP benefits. Respondent explained that the store did not have a restaurant at the time she made her purchases, and it had a larger inventory of meats. Respondent further explained that she purchased a large amount of food in January 2013 to host a party. The Department did not present clear and convincing evidence that Respondent's EBT transactions at [REDACTED] amounted to trafficking.

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, Respondent did not commit an intentional program violation, so Respondent is not subject to 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 did not engage in trafficking, so Respondent does not owe the Department a debt for trafficked benefits.


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 should not be disqualified from FAP.
3. Respondent does not owe the Department a debt for trafficking FAP benefits.

IT IS SO ORDERED.

JK/nr



Jeffrey Kemm
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

Jeanette Cowens
2524 Clark Street
Detroit, MI
48209

Wayne 41 County DHHS- via electronic mail

MDHHS Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

