



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 10, 2020
MOAHR Docket No.: 20-004047
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on November 18, 2020. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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. On an application for assistance dated [REDACTED], 2018, Respondent acknowledged her duties and responsibilities including the duty to use Food Assistance Program (FAP) benefits in a manner consistent with the Food and Nutrition Act of 2008. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, 35-65

2. Respondent reported to the Department on her [REDACTED], 2018, application form that her telephone number was [REDACTED] Exhibit A, p 30.
3. On [REDACTED], 2018, [REDACTED] [REDACTED] filed an application for assistance and reported to the Department that her telephone number was [REDACTED]. Exhibit A, pp 26-27.
4. [REDACTED] [REDACTED] has a membership at Sam's Club, a retail food business. Exhibit A, pp 16-17.
5. Respondent's representative testified that [REDACTED] [REDACTED] told her that Ms. [REDACTED] allowed Respondent to use her Sam's Club membership card. Respondent's representative testified that Ms. [REDACTED] also allowed Respondent to use her telephone.
6. [REDACTED] [REDACTED] was a Food Assistance Program (FAP) recipient and [REDACTED] was her authorized representative for her benefits. Exhibit A, p 19.
7. [REDACTED] [REDACTED] died on April 13, 2018.
8. [REDACTED] [REDACTED] was Respondent's mother and Respondent was previously a member of Ms. [REDACTED] household. Exhibit A, pp 9-10.
9. The Food Assistance Program (FAP) benefits granted to [REDACTED] [REDACTED] were used to make purchases totaling \$768.97 from April 17, 2018, through July 28, 2018. Exhibit A, pp 12-13.
10. On April 28, 2018, and June 19, 2018, the balance of Food Assistance Program (FAP) benefits available to [REDACTED] [REDACTED] was checked using the telephone number [REDACTED] which is [REDACTED] [REDACTED] telephone number. Exhibit A, p 25.
11. On June 12, 2018, and June 17, 2018, the balance of Food Assistance Program (FAP) benefits available to [REDACTED] [REDACTED] was checked using the telephone number [REDACTED], which is Respondent's telephone number. Exhibit A, p 25.
12. On July 28, 2018, at 1:10 p.m., the Food Assistance Program (FAP) benefits granted to [REDACTED] [REDACTED] were used to make a purchase at Randy's Sausage located at [REDACTED].
13. Respondent was a Food Assistance Program (FAP) recipient and she used her benefits to make purchases at Randy's Sausage located at [REDACTED], at 1:11 pm on July 28, 2018. Exhibit A, p 31.
14. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.

15. On June 10, 2020, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$768.97 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 69-72.

16. This was Respondent's first established IPV.

17. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 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 through 400.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Federal regulations provide the following definition of intentional program violations:

Definition of intentional Program violation. Intentional Program violations 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).

Respondent acknowledged her duties and responsibilities including the duty to use FAP benefits in a manner consistent with the Food and Nutrition Act of 2008 on an application for assistance dated March 13, 2018. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

██████████ was Respondent's mother and she died on April 13, 2018. ██████████ was a FAP recipient. After ██████████ died, the balance of her FAP benefits was checked from Respondent's telephone number, and a telephone number belonging to ██████████ membership at Sam's Club was used to make purchases using the FAP benefits of ██████████

The Department's representative testified that ██████████ told her that she allowed Respondent to use her Sam's Club membership card and her telephone.

The FAP benefits granted to ██████████ were used to make purchases totaling \$768.97 after she died.

On July 28, 2018, Respondent used her FAP benefits to make a purchase at Rand's Sausage. Within one minute of making that purchase, the benefits of ██████████ were also used to make a purchase at Randy's sausage on July 28, 2018.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Trafficking includes the buying, selling or stealing or otherwise effecting an exchange of FAP 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. Trafficking also includes attempting to buy, sell, steal, or otherwise affect an exchange of FAP 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. BAM 700, p 2.

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996), p 381.

The hearing record does not contain any direct evidence, in the form of witness statements, video or photographic evidence, or admissions from the Respondent, that Respondent improperly used the FAP benefits granted to [REDACTED] [REDACTED] after her death. Instead, the Department's case rests wholly on circumstantial evidence.

The Department's representative presented as a knowledgeable witness who provided a credible account of an investigation into purchases made using the FAP benefits of [REDACTED] [REDACTED] after she died. The evidence supports a finding that Respondent had access to her mother's electronic benefit transfer (EBT) card. The balance of those benefits was checked using a telephone number of Respondent and another telephone number that Respondent had access to. The benefits of [REDACTED] [REDACTED] were used within one minute at the same business as purchases made by Respondent using her own FAP benefits.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that Respondent used the FAP benefits of [REDACTED] [REDACTED] after she died. As there was no credible and persuasive explanation to the contrary, and inferring the Respondent's intent from the hearing record, this Administrative Law Judge finds that Respondent committed, and intended to commit FAP trafficking, which is an intentional program violation and creates an overissuance of FAP in the amount of the FAP benefits that were improperly transferred to Respondent.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a

member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.

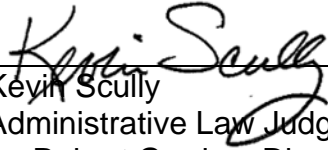
The Department has established an Intentional Program Violation (IPV).

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 Food Assistance Program (FAP) benefits in the amount of \$768.97.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$768.97 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/nr



Kevin Scully
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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG- via electronic mail
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED] - via first class mail
[REDACTED]
[REDACTED], MI
[REDACTED]