



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: January 8, 2021
MOAHR Docket No.: 20-005700
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent, [REDACTED], committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits. Pursuant to MDHHS' request for hearing and MCL 400.9, 7 CFR 273.16 and 7 CFR 273.18, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on January 6, 2021.

Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

Department Exhibit A.55 was offered and admitted into the record.

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Has MDHHS established a recipient claim against Respondent for \$579.11 based on FAP benefits trafficked by Respondent?

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 or about July 22, 2019, the Office of Inspector General (OIG) Data Analytic Unit received information that [REDACTED] died on [REDACTED] 2019, and that her Electronic Benefit Transfer (EBT) FAP card was used after her death. [REDACTED] was in a FAP group of one.
2. The Department obtained an IG-311 EBT History report that revealed that [REDACTED] EBT card was used for a total of six purchases after her death, totaling \$579.11 in FAP benefits, paid by the State of Michigan FAP program, from May 16, 2019 to July 14, 2019.
3. [REDACTED] did not have an Authorized Representative. Respondent is the decedent's son.
4. A CLEAR inquiry shows that three different telephone number inquiries were made as to the balance on [REDACTED] card, to a [REDACTED] phone number, belonging to Respondent, [REDACTED] for a number of years.
5. Respondent did not have an active FAP case at the time of the unauthorized use of a decedent's EBT card. Respondent was a FAP recipient in 2015. On [REDACTED] 2015, Respondent signed an Application for Assistance acknowledging that trafficking FAP benefits could result in an IPV.
6. The Office of Inspector General conducted an investigation and scheduled a telephone interview with Respondent. Respondent contacted the Department from the same phone number which made the multiple EBT inquiries.
7. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable. The hearing proceeded under the authority of the federal SNAP regulations.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3015.

Trafficking and IPV Disqualification

MDHHS alleges that Respondent committed an IPV by trafficking FAP benefits and requests that Respondent be disqualified from FAP eligibility. IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP federal] regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of [FAP] benefits or EBT [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2) and (e)(6). Trafficking includes buying, selling, stealing, or otherwise effecting, or attempting to buy, sell, steal or otherwise effect, “an exchange of [FAP] benefits issued and accessed via [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” 7 CFR 271.2.

Trafficking includes the sale or trade of FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else’s FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

To establish an IPV by trafficking, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720. Clear and convincing evidence is evidence sufficient to result in “a firm belief or conviction as to the truth of the precise facts in issue.” *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. The clear and convincing standard is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).

In this case, MDHHS alleged that Respondent committed an IPV by trafficking FAP benefits when he used an EBT card of a decedent, his mother, [REDACTED]. The decedent had a group size of 1. During the period from May 16, 2019 to July 14, 2019, the decedent’s card was used for six transactions at three establishments. Balance inquiries were recorded to have been made by Respondent’s phone number, which was the same phone number Respondent called from for an interview with the Office of Inspector General regarding the IPV. Respondent was not an authorized representative. Respondent has no known physical or mental incapacities.

Under these facts, the Department has met the clear and convincing burden of proof to show that Respondent committed an IPV of the FAP program as it is defined under federal and state law. 7 CFR 273.16(b).

Respondent has no prior IPV’s. Because Respondent has committed a first IPV, Respondent is disqualified from the FAP program for a period of one year. 7 CFR 273.16(b).

Repayment

A party is responsible for a recipient claim to MDHHS in an amount equal to the value of trafficked benefits. 7 CFR 273.18(a)(ii). The value of the trafficked benefits is

determined by (i) the individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination. 7CFR 273.18(c)(2). Documentation used to establish the trafficking determination can include 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, which can be established through circumstantial evidence. BAM 720.

Here, MDHHS seeks repayment from Respondent of \$579.11, the amount of the alleged trafficked benefits based on the evidence obtained from six transactions on the decedent's EBT card.

The evidence presented by MDHHS was sufficient to establish a valid recipient claim for \$579.11.

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. Because MDHHS has established by clear and convincing evidence that Respondent committed an IPV, Respondent is subject to a FAP disqualification.
2. Respondent is responsible to MDHHS for a recipient claim of \$579.11 for trafficked IPV benefits.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP recipient claim in the amount of \$579.11, less any amounts already recouped/collected, for the fraud period.

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

JS/ml



Janice Spodarek
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

