



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: February 12, 2021
MOAHR Docket No.: 20-007084
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION
FOR INTENTIONAL PROGRAM VIOLATION (TRAFFICKING)

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 February 10, 2021.

Daniel Beck, 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).

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 \$100.00 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. In an Application Respondent submitted to MDHHS on [REDACTED] 2017, MDHHS notified Respondent that buying or selling FAP benefits was prohibited.
2. Respondent did not have an apparent physical or mental impairment that would limit an understanding of this prohibition.
3. During the investigation of another case, the Michigan State Police was informed that [REDACTED] was taking Electronic Benefit Transfer (EBT) cards from people for cash, holding the card and paying the assigned card holder 50% of the card's value.
4. The owner of [REDACTED] is [REDACTED] (Owner).
5. Transactions were made at [REDACTED] under Owner's membership account using EBT cards but does not personally receive FAP benefits.
6. Owner admitted to the Michigan State Police that he had been "helping" people by giving them cash in exchange for the use of their EBT Card, 60-70 cents for every dollar on the EBT card.
7. Owner did not identify any individuals with whom he had been working in this scheme.
8. [REDACTED] transaction history combined with Department Electronic Benefit Transfer (EBT) history show that Respondent's EBT card was used at [REDACTED] with Owner's membership on February 19, 2018 for a total of \$100.00.
9. No surveillance footage of the transaction was available at the time of the investigation in this case.
10. In the month before, month of, and the month after this transaction, no other transactions were completed at [REDACTED].
11. Respondent has no prior FAP IPV disqualifications.
12. On August 25, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally trafficked FAP benefits from February 2018 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the value of trafficked benefits totaling \$100 and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months for an IPV by trafficking.

13. 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.

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.

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, p. 1. 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 her EBT card was used at [REDACTED] under Owner’s membership account. Respondent was aware that selling FAP benefits was illegal as noted by her signature on the Application. In making its case, the MDHHS relies on allegations made by another individual not involved in this case, statements by Owner who was not present at the hearing, and transaction histories. Nothing in this case record suggests that Respondent was trafficking FAP benefits other than Owner’s statements that he was participating in a fraud scheme. The use of Respondent’s EBT benefits on Owner’s membership account at [REDACTED] can be explained in many ways. Owner did not identify Respondent as a participant, nor did he identify any period in which he was

participating in this scheme. Furthermore, there is no surveillance footage showing the parties involved in the transaction. Many questions are raised by the evidence, but left unanswered. In *Shahid v Dep't of Health and Human Servs*, __ Mich App __; __ NW2d __ (2020) (Docket No. 347123), the Court of Appeals has recently held that the Department must provide clear and convincing evidence that each of Respondent's transactions were fraudulent, in other words trafficked, in order for a finding of an IPV to be made. The Court also held that a "suspicious pattern [of transactions] may be cause for investigation, but it is not, by itself, proof that any particular transaction was actually fraudulent, especially under the 'clear and convincing' standard of proof." *Id.*, p. 4. An assumption regarding Respondent's and Owner's actions and past experience related to other cases is insufficient to establish by clear and convincing evidence that Respondent trafficked the FAP benefits involved in this case. Therefore, the Department has not met its burden of proof by clear and convincing evidence. Respondent is not subject to a period of disqualification from FAP. 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, p. 8.

Here, MDHHS seeks repayment from Respondent of \$100.00, the amount of the alleged trafficked benefits. Since the Department has not met its burden of proof in establishing an IPV by trafficking, it is not entitled to a recipient claim in the amount of \$100.00.

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. MDHHS has not established by clear and convincing evidence that Respondent committed an IPV; Respondent is not subject to a FAP disqualification.
2. Respondent is not responsible to MDHHS for a recipient claim of \$100.00 for trafficked IPV benefits.

IT IS ORDERED that MDHHS delete the \$100.00 recipient claim against Respondent in its entirety.

IT IS FURTHER ORDERED that Respondent is not subject to a period of disqualification from FAP.



AMTM/cc

Amanda M. T. Marler
Administrative Law Judge
for Elizabeth Hertel, 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

Via Email:

MDHHS-Wayne-57-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent- Via USPS:

