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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

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Date Mailed: June 4, 2024
MOAHR Docket No.: 23-007417
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle R. Harkness

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 June 4, 2024. The Department was represented by Patrick Richard, Senior Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████, did not appear. The hearing was held in Respondent’s absence pursuant to 7 CFR 273.16(e)(4).

A 120-page packet of documents provided by the Department was admitted collectively as the Department’s Exhibit A.

ISSUES

1. Did Respondent receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect as a recipient claim?
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 for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. On ██████████ 2023, Petitioner applied for FAP benefits. Exhibit A, pp. 36-42.
2. On Respondent’s ██████████ 2023, FAP application, Respondent reported having a ██████████ or a ██████████ condition. *Id.* at p. 38.

3. Respondent signed the [REDACTED] 2023, FAP application acknowledging that he received, reviewed, and agreed to the FAP usage rights and responsibilities. *Id.* at pp. 41-42.
4. On May 4, 2023, an application interview was held wherein Respondent stated he is disabled but that he can and has been working. *Id.* at p. 44. Respondent also stated that he has not filed for disability and probably will not. *Id.* At the end of the interview, the FAP usage rights and responsibilities were explained to Respondent, and Respondent advised that he understood his rights and responsibilities. *Id.* at p. 50.
5. The Department issued FAP benefits to Respondent. Exhibit A, p. 51.
6. The Department received a complaint from [REDACTED] (Complainant) that Respondent was selling his FAP benefits. *Id.* at p. 4.
7. The Department contacted Complainant who admitted that she purchased Respondent's Bridge Card for \$140.00. *Id.*
8. Complaint stated she had 2 of Respondent's bridge cards ending in "[REDACTED]" and "[REDACTED]". *Id.*
9. The Department investigated and determined that Complainant's telephone number was used twice to access a Bridge Card ending in "[REDACTED]" that belonged to Respondent. *Id.* at p. 26.
10. From May 6, 2023, through June 4, 2023, Respondent's Bridge Card was used online at Walmart to spend \$432.73 in FAP benefits in purchases that were delivered to Complainant's address at: [REDACTED] MI [REDACTED]. *Id.* at pp. 4, 11.
11. The Department determined that Respondent was engaged in trafficking his FAP benefits.
12. The Department attempted to contact Respondent to obtain an explanation after speaking with Complainant, but the Department was unable to obtain Respondent's explanation. *Id.* at p. 4.
13. On October 31, 2023, the Department's OIG filed a hearing request to establish (a) that Respondent committed an IPV, and (b) that Respondent trafficked FAP benefits that the Department is entitled to recoup and/or collect as a recipient claim.
14. The Department's OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV, and it requested to have an overissuance of \$432.73 established. *Id.* at pp. 1-120.

15. A notice of hearing was mailed to Respondent at Respondent's last known address, and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance 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 (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. 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).

Intentional Program Violation

An 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). 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 met its burden. Complainant admitted that she purchased a Bridge Card belonging to Respondent for \$140.00. The Department investigated and determined that Complainant's telephone number was used twice to access Respondent's Bridge Card ending in "5376". Exhibit A, p. 26. Respondent's conduct meets the definition of trafficking in 7 CFR 271.2(1) because he sold his FAP benefits for cash or consideration other than eligible food items.

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, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a 12-month disqualification.

Overissuance

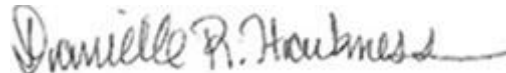
A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, Respondent trafficked \$432.73 in FAP benefits because he sold his FAP benefits. Thus, Respondent owes the Department a debt of \$432.73 for the value of FAP benefits trafficked.

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. Respondent received a \$432.73 overissuance of FAP benefits that the Department is entitled to recoup and/or collect as a recipient claim.
2. The Department established by clear and convincing evidence that Respondent committed an IPV.
3. Respondent is personally disqualified from the Food Assistance Program for 12 months.

IT IS SO ORDERED.



Danielle R. Harkness
Administrative Law Judge

DH/pt

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 Electronic Mail:

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562
MDHHS-OIG-HEARINGS@michigan.gov

DHHS

Pam Farnsworth
Monroe County DHHS
903 Telegraph
Monroe, MI 48161
MDHHS-Monroe-Hearings@michigan.gov

Interested Parties

Monroe County DHHS
Policy Recoupment
N. Stebbins
MOAHR

Via First Class Mail:

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