



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 3, 2023
MOAHR Docket No.: 23-001029
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 Nicholas Rolland committed an intentional program violation (IPV). Pursuant to MDHHS' request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on July 27, 2023. Lindsay Rauch, 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); 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 MDHHS is entitled to recoup?
2. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 May [REDACTED] 2020, Respondent submitted an application for FAP benefits for a one-person group. Prior to submission of the application, Respondent was provided

with the rights and responsibilities as a benefit recipient and advised that buying or selling FAP benefits was prohibited when submitting his application (Exhibit A, pp. 10-60).

2. On May 11, 2020, MDHHS issued a Notice of Case Action to Respondent informing him that he was eligible for FAP benefits and reminding him of his obligation to report changes in household circumstances to MDHHS within ten days (Exhibit A, pp. 61-68).
3. On March 29, 2021, MDHHS received a redetermination of benefits form from Respondent. Respondent acknowledged his rights and responsibilities as a benefit recipient, including that that buying or selling FAP benefits was prohibited (Exhibit A, pp. 69-73).
4. On April 7, 2021, MDHHS interviewed Respondent as part of the FAP redetermination process. As part of the interview, rights and responsibilities as a benefit recipient were reviewed and Respondent was advised that buying or selling FAP benefits was prohibited (Exhibit A, pp. 74-76).
5. Respondent was the only member of his FAP group and the only authorized user on his FAP case. Respondent's Bridge card was not reported stolen in 2021 (Exhibit A, p. 84).
6. From October 9, 2021 through January 20, 2022 Respondent was incarcerated in the Genesee County Jail (Exhibit A, pp. 77-79)
7. From October 12, 2021 through December 15, 2021, Respondent's Bridges Electronic Benefit Transfer (EBT) FAP card was used to make purchases totaling \$[REDACTED] (Exhibit A, pp. 80-81).
8. Respondent did not have an apparent physical or mental impairment that would limit an understanding of this prohibition.
9. Respondent has no prior FAP IPV disqualifications.
10. On February 23, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally trafficked FAP benefits from October 12, 2021 through December 15, 2021 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the value of trafficked benefits totaling \$[REDACTED] and (ii) Respondent be disqualified from receiving FAP benefit for a period of 12 months due to committing an IPV by trafficking.
11. 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.

An IPV requires that MDHHS establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (October 2017), p. 1 (emphasis in original); see also 7 CFR 273.16(e)(6). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). Department policy defines trafficking as (i) the buying, selling or stealing of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (October 2018), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2015), p. 66. Department policy also includes trafficking as (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (April 2021), p. 3. The federal regulations define trafficking to include “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.” 7 CFR 271.2.

In this case, MDHHS alleged that Respondent committed an IPV because his FAP benefits were used during his incarceration, suggesting he allowed an unauthorized person to use his card and engaged in the trafficking of benefits. An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf. BAM 110 (January 2020), p. 9; 7 CFR 273.2(n)(1). For FAP cases, An AR who applies on the group's behalf and is a group member may be any age. BAM 110, p. 10. If outside the group, they must be at least age 18. BAM 110, p. 10. An AR who applies on the group's behalf and/or has access to the group's FAP benefits must be designated in writing by the client, via the DHS-1171, Assistance Application, and/or DHS-247, Request for Food Stamp Authorized Representative. BAM 110, p. 10; 7 CFR 273.2(n)(1)(i). A household may allow any household member or nonmember to use its food assistance benefits to purchase food or meals, if authorized, for the household. 7 CFR 273.2(n)(3). Misuse of FAP benefits includes selling, trading or giving away FAP benefits, PIN or Michigan Bridge Card. BAM 401E (September 2021), p. 14.

In support of its contention that Respondent committed an IPV, MDHHS presented the application and redetermination of benefits forms that Respondent submitted on May 9, 2020 and March 29, 2021, respectively. MDHHS asserts that Respondent acknowledged that he had received the Information Booklet advising him regarding “Things You Must Do” which explained how to use FAP benefits lawfully. MDHHS presented documentation that Respondent was incarcerated at the Genesee County Jail from October 9, 2021 through January 20, 2022. MDHHS presented that Respondent did not report his EBT card stolen and did not have any other members in his group or individuals authorized to use his card during the alleged fraud period. Respondent’s EBT card was in regular use during his period of incarceration, the card being swiped, and a PIN number entered to complete the purchase using FAP benefits.

MDHHS presented evidence that sufficiently established that Respondent authorized someone outside of the FAP-benefit group to make purchases with his card. However, per federal regulations, in order to establish an IPV for trafficking/unauthorized use, the benefits must be exchanged for cash or consideration, other than eligible food items. 7 CFR 271.2. Policy does not define “consideration,” but it is generally defined as something of value that is bargained for by a party as part of a contract. The requirement of “cash or consideration” requires MDHHS to establish that Respondent received something of value for use of his FAP benefits; no such allegation was made, and no evidence was presented to show that Respondent received any consideration for use of his FAP benefits. Based on the evidence presented, MDHHS failed to establish by clear and convincing evidence that Respondent committed an IPV of his FAP benefits either by failing to report his incarceration or through trafficking.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (July 2017), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; 7 CFR 273.16(b). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, MDHHS has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

Repayment

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the benefits. BAM 700, p. 1. The amount of benefits MDHHS is entitled to recoup/collect for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) documentation used to establish the trafficking determination, such as 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; 7 CFR 273.18(c)(2).

At the hearing, MDHHS asserted that Respondent trafficked the FAP benefits issued to him by allowing an unauthorized person to use his FAP benefits while he was incarcerated. The Department presented Respondent's IG-311 EBT Transaction history and identified \$[REDACTED] in FAP transactions that were alleged to have been trafficked by Respondent. However, as discussed above, the Department failed to present clear and convincing evidence to support its allegation that Respondent committed an IPV by trafficking. Therefore, MDHHS failed to establish there was an overissuance amount of \$[REDACTED]

In this case, MDHHS is seeking recoupment of FAP benefits as it alleges that Respondent received more benefits than he was entitled. Incarcerated individuals are not eligible for FAP benefits during the period of their incarceration. BEM 212, p. 8; 7 CFR 273.1(b)(7). Jail, prison, juvenile detention and secure short-term detention are included in the definition of an institution. BEM 265 (April 2018), p. 1. Residents of institutions are not eligible for FAP benefits unless one of the following is true: the facility is authorized by the Food and Consumer Service to accept FAP benefits, the facility is an eligible group living facility (see BEM 615), or the facility is a medical hospital and there is a plan for the person's return home. BEM 212, p. 8. Based on Respondent's incarceration status, he was not eligible for benefits issued during the fraud period. However, the overissuance amount presented was based on the Department's allegation that Respondent trafficked his benefits based on unauthorized use. When determining the overissuance amount based on incarceration status alone, the calculation of the overissuance amount is different from that of trafficking. The overissuance amount would be based on benefits

issued, not benefits used. Therefore, MDHHS failed to establish the overissuance amount based on Respondent's incarceration status. It should be noted that this decision does not preclude MDHHS from pursuing an overissuance based on client or agency error.

DECISION AND ORDER

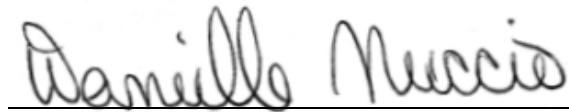
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. MDHHS has not established by clear and convincing evidence that Respondent committed an IPV.
2. MDHHS failed to establish Respondent was overissued FAP benefits in the amount of \$ [REDACTED]

It is **ORDERED** that MDHHS delete the OI and cease any recoupment and/or collection action.

It is **FURTHER ORDERED** that Respondent is not disqualified from FAP.

DN/dm



Danielle Nuccio

Administrative Law Judge

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
**MDHHS-OIG-
HEARINGS@michigan.gov**
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**MDHHS-Genesee-Clio-
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Policy-Recoupment

StebbinsN

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]