



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN
DIRECTOR

Date Mailed: May 8, 2024
MOAHR Docket No.: 23-005010
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 Licia Valkier 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 April 8, 2024.

Mark Mandreky, 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 \$[REDACTED] 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 December █ 2020, MDHHS notified Respondent of the FAP usage responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 8-46)
2. During a December █ 2020 interview the rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 48-50)
3. In August 2021, Respondent received FAP benefits for a household of three, herself and two children. Respondent did not have an alternate payee or authorized representative. (Exhibit A, pp. 52-53, 62, 64, and 66)
4. On August █ 2021, Respondent's Electronic Benefit Transfer (EBT) card ending in █ was used at Meijer #█ by another FAP beneficiary, █ utilizing FAP benefits totaling \$█ (Exhibit A, pp. 68, 75, and 80-84)
5. On August █ 2021, Respondent utilized her EBT card ending in █ at Meijer #█ and Meijer #█ (Exhibit A, pp. 68, 74, and 84-93)
6. On September █ 2021, Respondent reported her EBT card ending in █ was lost. (Exhibit A, p. 78)
7. On June █ 2023, Victoria Sloan signed an Affidavit stating that she purchased FAP benefits from Respondent for \$0.50 per dollar of benefits and used the FAP benefits to buy food for her family. (Exhibit A, p. 95)
8. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities. (Exhibit A, pp. 44, 49, 55, and 57)
9. Respondent has no prior FAP IPV disqualifications. (Exhibit A, pp. 59-60)
10. On August 21, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally trafficked FAP benefits from August 1, 2021 to August 30, 2021 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the value of trafficked benefits totaling \$█ and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV by trafficking. (Exhibit A, pp. 1-99)
11. A notice of hearing was mailed to Respondent at the last known address and was 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 by selling benefits on her EBT card.

Respondent’s signature on the December ■ 2020 Assistance Application certified that she read and understood the rights and responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 8-46). During a December ■ 2020 interview the rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 48-50). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities. (Exhibit A, pp. 44, 49, 55, and 57).

In August 2021, Respondent received FAP benefits for a household of three, herself and two children. Respondent did not have an alternate payee or authorized representative. (Exhibit A, pp. 52-53, 62, 64, and 66).

On August █ 2021, Respondent's EBT card ending in █ was used at Meijer #█ by another FAP beneficiary, █ █ utilizing FAP benefits totaling \$█ (Exhibit A, pp. 68, 75, and 80-84). On August █ 2021, Respondent utilized her EBT card ending in █ at Meijer #█ and Meijer #█ (Exhibit A, pp. 68, 74, and 84-93).

On September █ 2021, Respondent reported her EBT card ending in █ was lost. (Exhibit A, p. 78). This was well after the August █ 2021 transaction at issue for this case.

On June █ 2023, █ signed an Affidavit stating that she purchased FAP benefits from Respondent for \$0.50 per dollar of benefits and used the FAP benefits to buy food for her family. (Exhibit A, p. 95).

Under the facts presented, MDHHS has established by clear and convincing evidence that Respondent trafficked FAP benefits by selling benefits on her EBT card. Thus, Respondent did commit an IPV. An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b). Because Respondent had no prior FAP IPV violations, Respondent is subject to a 12-month disqualification from the FAP program. 7 CFR 273.16(b)(BAM 720, p. 16). (Exhibit A, pp. 59-60).

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 \$█ the amount of the alleged trafficked benefits.

As noted above, on August █ 2021, Respondent's EBT card ending in █ was used at Meijer #█ by another FAP beneficiary, █ █ utilizing FAP benefits totaling \$█ (Exhibit A, pp. 68, 75, and 80-84). On June █ 2023, █ signed an Affidavit stating that she purchased FAP benefits from Respondent for \$0.50 per dollar of benefits and used the FAP benefits to buy food for her family. (Exhibit A, p. 95).

The evidence presented by MDHHS was sufficient to establish a valid recipient claim for \$[REDACTED]

DECISION AND ORDER

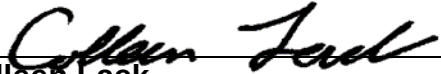
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 \$[REDACTED] 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 \$[REDACTED] 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.

CL/dm



Colleen Lack
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**

DHHS
Kimberly Kornoelje
Kent County DHHS
**MDHHS-Kent-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]