

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 15-005782
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 16, 2015
County: WAYNE-DISTRICT 35
(REDFORD)

ADMINISTRATIVE LAW JUDGE: Gary Heisler

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on June 16, 2015. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. Participants on behalf of the Department of Human Services (Department) included RA [REDACTED].

ISSUE

Whether Respondent engaged in trafficking (attempted) Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

- (1) Respondent was not an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) On January 27, 2015, Respondent posted a twitter offer to buy a Food Assistance Program Electronic Benefit Transfer Card.
- (3) On April 16, 2015, the Office of Inspector General submitted the agency request for hearing of this case

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACR 400.3001-3015.

Intentional Program Violation (IPV)

In this case, the Department has requested a disqualification hearing to establish that Respondent committed an Intentional Program Violation (IPV) by attempting to sell or buy Food Assistance Program benefits. The Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS (10-1-2014)

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

DEFINITIONS

Suspected IPV

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS (1-1-2015)

FAP TRAFFICKING

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. These FAP trafficking disqualifications are a result of the following actions:

Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or

Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

The Delegation of Hearing Authority issued to Michigan Administrative Hearing System by the Director of Michigan's Department of Health and Human Services' specifically states "Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy." Department policy, as cited above, provides only a broad and general definition of trafficking.

The definition of trafficking in 7 CFR 271.2 Definitions, includes "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."

In this case, the Department has presented evidence of the twitter post made by Respondent. The Department has also presented evidence showing that the twitter account belongs to Respondent. This evidence constitutes clear and convincing evidence that Respondent attempted to buy a Food Assistance Program Electronic Benefit Transfer Card/benefits.

Department policy does not provide any specific guidance on criteria for, or the evidentiary standard when determining a trafficking Intentional Program Violation (IPV). 7 CFR 273.16 provides in part:

(c) Definition of intentional Program violation. Intentional Program violations 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 the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

(e)(6) Criteria for determining intentional Program violation states. The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

Regulation Agents from the Department's Office of Inspector General regularly assert that there is no requirement to show intent when presenting a trafficking charge in an Administrative Law Hearing. Michigan's lack of policy does not negate the federally established requirements as cited above. The federally established requirements are clear and convincing evidence that Respondent violated the Food Stamp Act or the Food Stamp Program Regulations and intended to violate the Food Stamp Act or the Food Stamp Program Regulations.

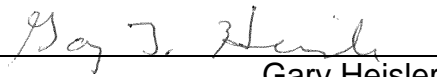
If a person intentionally commits an act, but they did not know the act violated a rule or regulation, they have accidentally violated the rule or regulation. To intentionally violate the rule or regulation the person must have knowledge of the rule or regulation. Black's Law Dictionary, Intent . . . being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. *State v. Walker*, 109W.Va. 351, 154 S.E. 866, 867. It presupposes knowledge. *Reinhardt v. Lawrence Warehouse Co.*, 41 Cal.App.2d 741, 107 P.2d 501, 504.

In this case Respondent was a recipient of Food Assistance Program benefits under her mother's case at a point in the past. However, there is no evidence which shows Respondent was ever issued her own Electronic Benefit Transfer Card or the accompanying documentation that would give her notice of the Food Stamp Program Regulations. The Department has not met its evidentiary burden of submitted clear and convincing evidence that shows Respondent intentionally, attempted to violate the Food Stamp Act or the Food Stamp Program Regulations.

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, finds that the Department has not established by clear and convincing evidence that Respondent attempted to engage in Food Assistance Program (FAP) trafficking.

It is ORDERED that the actions of the Department of Human Services, in this matter, are NOT UPHELD.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/29/2015**

Date Mailed: **6/29/2015**

GFH / 

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

