



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 29, 2016
MAHS Docket No.: 16-007850
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on November 1, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing; and it was held in Respondent's absence in accordance with Bridges Administration Manual (BAM) 720 Intentional Program Violation.

ISSUE

Whether Respondent engaged in trafficking 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 a recipient of Food Assistance Program (FAP) benefits. There is no evidence in the record which shows that Respondent was ever provided notice of the Food Assistance Program rules and the consequences for breaking those rules.
- (2) On February 19, 2015, Respondent posted an offer to buy a Food Assistance Program Electronic Benefit Transfer Card on twitter.

- (3) On March 11, 2015, Respondent posted an offer to buy a Food Assistance Program Electronic Benefit Transfer Card on twitter.
- (4) On February 23, 2016, the Department sent Respondent notice of their intent to pursue an Intentional Program Violation.
- (5) On September 28, 2016, Respondent was sent a Notice of Disqualification Hearing.

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 AACRS R 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish that Respondent committed an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits.

Bridges Administration Manual (BAM) 700 Benefit Over-Issuances defines trafficking as follows:

Trafficking is:

The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.

Selling products purchased with FAP benefits for cash or consideration other than eligible food.

Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

Bridges Administration Manual (BAM) 720 Intentional Program Violation governs the Department's actions in this case. It provides in relevant part:

DEFINITIONS ALL PROGRAMS

Suspected IPV

Suspected IPV means an over-issuance exists for which all three of the following conditions exist:

The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and

The client was clearly and correctly instructed regarding his or her reporting responsibilities, and

The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

FAP Only

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

IPV

FAP Only

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

OVER-ISSUANCE AMOUNT

FAP Trafficking

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

The court decision.

The individual's admission.

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. This can be established through circumstantial evidence.

OIG RESPONSIBILITIES

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as T

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.

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."

Department policy does not provide any specific guidance on criteria for, or the evidentiary standard when determining a trafficking Intentional Program Violation (IPV). However, 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.

The federal requirements for establishing an Intentional Program Violation 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 a rule or regulation, a 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, the Department has presented evidence that Respondent posted a solicitation to buy a Food Assistance Program Electronic Benefit Transfer Card on twitter. The Department has also presented evidence showing that the twitter account belongs to Respondent.

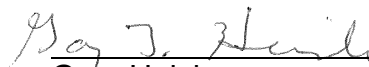
However, there is no evidence which shows that Respondent was ever a recipient of Food Assistance Program benefits or was ever provided notice of the Food Assistance Program rules and the consequences for breaking those rules. The Department has not met its evidentiary burden of submitting clear and convincing evidence that shows Respondent intentionally, violated or 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 engaged in Food Assistance Program (FAP) trafficking.

It is **ORDERED** that the actions of the Department of Health and Human Services, in this matter, are **REVERSED**.

GH/nr



Gary Heisler
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]