



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 30, 2016
MAHS Docket No.: 16-009998
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 November 29, 2016. 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 Regulation Agent [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 an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) On August 13, 2015, Respondent posted a solicitation on twitter offering to purchase an EBT (Electronic Benefit Transfer) Card.
- (3) On August 17 2015, Respondent posted another solicitation on twitter offering to purchase an EBT (Electronic Benefit Transfer) Card.

- (4) On September 14 2015, Respondent posted another solicitation on twitter offering to purchase an EBT (Electronic Benefit Transfer) Card.
- (5) On October 3, 2015, Respondent posted another solicitation on twitter offering to purchase an EBT (Electronic Benefit Transfer) Card.
- (6) On October 27, 2015, Respondent submitted another Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits. The application included identifying information about herself and her son. Respondent signed the affidavit in the application, again certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
- (7) On April 6, 2016, Respondent posted another solicitation on twitter offering to purchase an EBT (Electronic Benefit Transfer) Card.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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.

INTENTIONAL PROGRAM VIOLATION

In this case, the Department has presented evidence showing that Respondent made five separate posts on twitter, attempting to purchase an EBT (Electronic Benefit Transfer) Card. The Department has also presented evidence showing that Respondent is the owner of the twitter account [REDACTED], where the solicitations were posted. The positive identification is based on: comparison of photographs posted on the twitter account with Respondent's Secretary of State driver's license photograph; photographs posted on the twitter account which identify Respondent's son; and photographs posted on the twitter account which identify Respondent as an employee of the business she reported as her employer to the Department. This constitutes clear and convincing evidence that Respondent attempted to buy Food Assistance Program Electronic Benefit Transfer Cards.

The Department also submitted evidence which shows Respondent was a Food Assistance Program benefit recipient who possessed her own Electronic Benefit Transfer Card (EBT). All persons issued an EBT are also issued the "How To Use Your Michigan Bridge Card" booklet at the same time as they are issued their EBT. The booklet provided Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules. The Department has met its evidentiary burden of showing that Respondent intentionally, attempted to violate the Food Stamp Act or the Food Stamp Program Regulations.

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long

as he lives with them, and other eligible group members may continue to receive benefits.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

DECISION AND ORDER

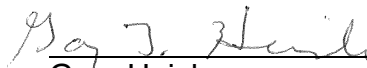
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by clear and convincing evidence that Respondent attempted to engage in Food Assistance Program (FAP) trafficking.

The Department has presented no evidence that Respondent received an over-issuance of Food Assistance Program (FAP) benefits due to this Intentional Program Violation. Therefore, the Department cannot pursue recoupment of any amounts in connection with this incident.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

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

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]