



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED] July 11, 2017  
MAHS Docket No.: 17-000787  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki Armstrong

### **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, 42 CFR 431.230(b), 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 [REDACTED], from [REDACTED], Michigan.

The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 28 exhibits which were admitted into evidence.

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code, R 400.3130(5), or Mich Admin Code, R 400.3178(5). The record closed at the conclusion of the hearing.

### **ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for Food Assistance Program (FAP) benefits?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED], to establish an overissuance (OI) of benefits received by Respondent as a result of Respondent having Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving program benefits. [Dept. Exh. 1, 3].
3. Respondent was a recipient of FAP benefits issued by the Department from [REDACTED], through [REDACTED], and in [REDACTED]. [Dept. Exh. 12-20].
4. On [REDACTED], Respondent posted a [REDACTED] writing, "Buying somebody bridge card today. I gotta start back cooking like I used to." [Dept. Exh. 9].
5. On [REDACTED], Respondent posted, "Who got a bridge card I can buy?" on her [REDACTED] account. [Dept. Exh. 9].
6. On [REDACTED], the selfies on the [REDACTED] account were identified by the Michigan State Police as that of Respondent. [Dept. Exh. 11].
7. Respondent was aware of the responsibility to not traffic FAP benefits. [Dept. Exh. 17-18].
8. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 20].
9. Respondent did not appear and give evidence at the scheduled hearing to rebut the evidence presented by Petitioner in the Hearing Summary and admitted exhibits.
10. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 to .3015.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
  - the total amount is less than \$500, and
    - the group has a previous IPV, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
    - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (1/1/2016).

### **Intentional Program Violation**

Suspected IPV means an OI 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 reporting responsibilities. BAM 700 (10/1/2014), p 7; BAM 720, p 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1. Trafficking is the buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. BAM 700, p 2 (10/1/2015). Trafficking is also attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible

food. *Id.* For FAP benefits, an overissuance is the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *Id.* at 1-2.

In this case, Respondent posted two separate tweets on her [REDACTED] account, “Buying somebody bridge card today. I gotta start back cooking like I used to,” and “Who got a bridge card I can buy?”

The first [REDACTED], “Buying somebody bridge card today. I gotta start back cooking like I used to,” is a statement of intent. However, without more, a dollar amount, or who she is going to buy the bridge card from, it does not rise to the level of attempt.

In cases other than criminal prosecutions, an “attempt” ordinarily means an intent combined with an act falling short of the thing intended. It may be described as an endeavor to do an act, carried beyond mere preparation, but short of execution. Black’s Law Dictionary (9th ed. 2009), available at Westlaw BLACKS.

Here, there is no evidence that Respondent actually attempted to buy a bridge card. The only evidence presented is that she said she intended to.

The second [REDACTED], “Who got a bridge card I can buy?” is a question made to an anonymous audience. Here again is an intent to buy a bridge card without evidence of an actual act to buy the bridge card, falling short of execution.

In the above captioned case, no evidence was presented, beyond the actual tweets, showing that she did attempt to buy a bridge card from anyone or for consideration or a dollar amount.

Further, the amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) 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. *Id.* at 8.

Petitioner failed to present evidence of the amount of the trafficking-related IPV, by a court decision, admission or circumstantial evidence. The evidence presented did not rise to the clear and convincing standard that it was sufficient to result in a clear and firm belief that the proposition Respondent trafficked FAP benefits is true. See M Civ JI 8.01.

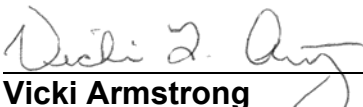
Therefore, the undersigned Administrative Law Judge does not find that Respondent trafficked FAP benefits by attempting to obtain benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2).

**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, concludes that the Department failed to provide clear and convincing evidence sufficient to establish that Respondent committed an IPV.

The Department is **ORDERED** to delete the OI and cease any recoupment action.

VLA/bb



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**Vicki Armstrong**  
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]