



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: July 10, 2017
MAHS Docket No.: 17-001315
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Health and Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on July 6, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Agent with the Office of Inspector General (OIG) appeared on behalf of the Department. 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).

ISSUES

1. Did Respondent commit an Intentional Program Violation (IPV) concerning Food Assistance Program (FAP) benefits?
2. Did Respondent receive an overissuance (OI) of FAP benefits?
3. Should Respondent be disqualified from receiving FAP benefits?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on January 25, 2017, to establish that Respondent had allegedly committed an IPV.
2. The Department's OIG alleges that Respondent is guilty of an IPV concerning FAP benefits when he offered to sell an Electronic Benefit Transfer (EBT) or "Bridge" card on social media.

3. The OIG has requested that Respondent be disqualified from receiving FAP benefits.
4. Respondent received FAP benefits issued by the Department. [Exh. 1, pp. 14-15].
5. Respondent was aware that it was unlawful to attempt to buy or sell FAP benefits for cash or consideration. [Exh. 1, p. 16-19].
6. On February 6, 2016, Respondent posted a message on a social media website (Twitter) that indicated, "Bridge card for sale. \$█ get you \$█ Hmu ASAP." [Exh. 1, p. 12].
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern the lawful use of FAP benefits.
8. Respondent did not engage a transaction that involved FAP benefits.
9. This was Respondent's first alleged FAP IPV.
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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the 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-.3011.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) (10-1-2015), p. 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (10-1-2016) p. 1.

Trafficking

BAM 720 (1-1-2016), p. 1, indicates that an IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. According to 7 CFR 273.16 (c)(2), an intentional program violation consists 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 SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.”

“Trafficking” is defined as, “The stealing, trading, buying, selling or attempted to have been stolen, traded, bought or sold of FAP benefits for cash or consideration other than eligible food.” BPG (10-1-2015), p. 66.

According to BEM 203 (10-1-2016), p. 2, 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. [Emphasis added].

A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act is guilty of trafficking. See 7 U.S.C. §§ 2011 to 2030 and MCL §750.300a. This includes voluntary transfer of Electronic Benefit Transfer (EBT) or “Bridge” cards and/or FAP benefits to any person outside of the FAP group. FAP recipients cannot sell, trade, or give away their FAP benefits, Personal Identification Number (PIN) or Michigan EBT card. FAP benefits must be used by household members to purchase eligible food for the household. 7 C.F.R. §274.7.

FAP recipients are precluded from purchasing eligible food items on credit and paying for the items using their EBT or Bridge card. FAP benefits shall not be used to pay for any eligible food purchased prior to the time at which the EBT card is presented to the authorized retailer or used to pay for eligible food in advance of the receipt of the food. 7 C.F.R. §274.7.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked or attempted to have been trafficked. BEM 203, pp. 2-3. [Emphasis added].

On or about November 1, 2013, the United States Department of Agriculture, Food and Nutrition Service (FNS) issued a final rule to amend Supplemental Nutrition Assistance Program (SNAP) regulations to define “trafficking” to include the attempt to buy or sell SNAP benefits in cases where an individual makes the offer to sell SNAP benefits and/or Electronic Benefit Transfer (EBT) card online or in person. See 7 CFR 271-274. See also Federal Register Vol. 78, No. 212 issued November 1, 2013.

Clear and convincing evidence

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an IPV. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department’s OIG Agent contends that Respondent is guilty of an IPV after he communicated on social media (Twitter) an offer to sell an EBT or “Bridge” card. Respondent did not appear at the hearing to dispute the Department OIG Agent’s contentions.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge’s findings based on the clear and convincing evidence on the whole record.

The record shows that Respondent previously applied for FAP benefits in the State of Michigan. [Exhibit 1, pp. 14-15]. Respondent’s signature on the Assistance Applications in this record certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. [Exh. 1, p. 16]. Based on the above Findings

of Fact, the record shows that it was Respondent who, on February 6, 2016, offered to sell an EBT or Bridge card on social media. [Exh. 1, p. 12]. The clear and convincing evidence shows that it was Respondent who posted the following words on his Twitter page, "Bridge card for sale. \$█ get you \$█ HMU ASAP." [Exh. 1, p. 12]. However, the next question is whether this activity is unlawful.

The law is well-settled that even an attempt to buy, sell or steal FAP benefits for cash or consideration other than eligible food is unlawful. See BEM 203, p. 2. Although BAM 700, p 1 defines "trafficking" as the "buying or selling" of FAP benefits for cash or consideration other than eligible food, there is sufficient authority to support the notion that an individual who attempts to buy or sell FAP benefits is guilty of trafficking FAP benefits. See 7 CFR 273.16 (c)(2) and Federal Register Vol. 78, No. 212 issued November 1, 2013. Here, Respondent's statement that there is a "Bridge card for sale" followed by the amount \$█ get you \$█ is an attempt to sell FAP benefits. [Exh. 1, p. 12]. Although there is no evidence that Respondent engaged in a specific transaction, the posting itself was still a violation of the FAP program. This constitutes clear and convincing evidence that Respondent attempted to buy or sell FAP benefits as defined above. Respondent did knowingly intend to transfer, acquire, receive or traffic benefits for use other than authorized by the Food Stamp Act of 1977, 7 U.S.C. 2011 to 2030, and; is therefore guilty of an IPV.

Disqualification

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720, p. 16.

Based on the above Findings of Fact, the Department has shown by clear and convincing evidence, that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent shall be disqualified from FAP benefits for 1 year.

Overissuance

An overissuance (OI) is the amount the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8. The OI amount for trafficking-related IPV's is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) 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. BAM 720, p 8. [Emphasis added].

Based on the above Findings of Fact, the Department has shown by clear and convincing evidence on the whole record that Respondent trafficked FAP benefits. However, the record in this case shows that Respondent merely offered to sell FAP benefits, but the evidence is not clear and convincing that he received cash or

consideration in exchange for FAP benefits. Therefore, Respondent did not receive an OI of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

1. Respondent did commit an IPV due to FAP trafficking.
2. Respondent did not receive an OI of FAP benefits.
3. Respondent shall be disqualified from FAP benefits for a period of 12 months (1 year).

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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]