



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: August 7, 2017  
MAHS Docket No.: 17-001366  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 June 22, 2017, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent with the Office of Inspector General. Respondent did not appear.

**ISSUE**

The issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) based on trafficking of Food Assistance Program (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. On multiple dates, Respondent offered, via social media, to buy FAP benefits
2. Respondent's offer to buy FAP benefits was an attempt to traffic FAP benefits.
3. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV.
4. Respondent had no history of IPVs.

## 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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish Respondent committed an IPV. [MDHHS] may request a hearing to... establish an intentional program violation and disqualification... [or to] establish a collectable debt on closed cases. BAM 600 (October 2015), p. 4.

MDHHS presented an unsigned Request for Waiver of Disqualification hearing (Exhibit 1, pp. 6-7) dated [REDACTED]. The document and MDHHS alleged Respondent committed an IPV by attempting to traffic FAP benefits.

The Code of Federal Regulations defines an IPV. 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. 7 CFR 273.16 (c).

[For FAP benefits only, an] IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 2016), p. 1. Trafficking is [established by one of the following]:

- 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.

BAM 700 (January 2016), p. 2.

IPV is suspected when there is **clear and convincing** [emphasis added] 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. *Id.* Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01. It is a standard

which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS alleged Respondent posted an offer to buy EBT benefits on social media. The allegation assumes that Respondent was the creator of the social media account.

It must be acknowledged that more than a nominal percentage of social media accounts are forged. If someone bothered to forge a social media account, the forger would likely use the name, photos, and/or information of the person for whom the account was forged. Presented evidence was not indicative that the social media account allegedly involved in trafficking FAP benefits was forged.

MDHHS presented a copy of a tweet (Exhibit 1, p. 10) dated October 19 (no year was indicated). The tweet stated, "I'm still buying stamps too if anybody on timeline selling any [emoji deleted]".

MDHHS presented a copy of tweet (Exhibit 1, p. 10) dated [REDACTED]). The tweet stated, "anybody selling a bridge card could yall please let me know, DM me or something."

The presented tweets are deemed to be clear and convincing offers to buy FAP benefits. The analysis will proceed to consider whether MDHHS established that Respondent was the person offering to buy FAP benefits.

MDHHS presented a screen-shot of the tweet's author's Twitter page (Exhibit 1, p. 10). The Twitter account associated with the page included Respondent's first name and last name initial. This consideration is supportive in concluding that Respondent was the author of the tweets.

The Twitter page also included various photographs. MDHHS used one of the photographs to identify Respondent as the Twitter page's owner.

MDHHS presented the results of a facial match inquiry (Exhibit 1, p. 11) performed by the Michigan State Police. The report included a photograph allegedly from the Twitter page allegedly used to attempt to purchase FAP benefits and Respondent's photograph from the Secretary of State. The report concluded that the photographs were sufficiently similar so that further investigation was warranted.

It is found that Respondent was the owner of the social media account that attempted to purchase FAP benefits. It is further found that Respondent engaged in attempted FAP trafficking. Accordingly, MDHHS established that Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV [, and] lifetime for the third IPV. *Id.*

MDHHS did not allege Respondent previously committed an IPV. Thus, a 1-year disqualification period is justified.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on attempted FAP benefit trafficking. The MDHHS request to establish a 12-month disqualification against Respondent is **APPROVED**.

CG/hw



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**Christian Gardocki**  
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]