



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 1, 2017
MAHS Docket No.: [REDACTED] 17-002864
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 [REDACTED], 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, a Twitter page using Respondent's name posted, "Who got stamps for sale" and "Who got stamps".
2. Respondent did not clearly and convincingly attempt to traffic FAP benefits.
3. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV.

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. 5-6) 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).

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 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.

MDHHS presented a copy of a tweet (Exhibit 1, p. 9) dated [REDACTED]. The tweet stated, "Who got stamps for sale".

MDHHS presented a copy of a tweet (Exhibit 1, p. 10) dated [REDACTED]. The tweet stated, "Who got stamps".

MDHHS presented a screenshot of the Twitter page (Exhibit 1, p. 10) and various photographs (Exhibit 1, pp. 11-12) from the Twitter page. The name associated with the Twitter page matched Respondent's name.

MDHHS presented a Secretary of State photograph from Respondent (Exhibit 1, p. 11). MDHHS alleged the person photographed closely resembled the person photographs from presented Twitter page photographs.

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.

Consideration was given to whether Respondent's tweets amounted to offers to buy FAP benefits. A literal interpretation of the tweets is that Respondent was attempting to buy stamps, not FAP benefits. Generally, persons are much more likely to use social media to traffic FAP benefits rather than to purchase postage.

If Respondent's tweets were offers to buy FAP benefits, it does not necessarily follow that Respondent's postings satisfied the definition of attempted trafficking of FAP benefits. MDHHS policy does not define "attempt" but it can be presumed that MDHHS need not establish that Respondent purchased FAP benefits (because then Respondent's actions amount to trafficking, not attempted trafficking). It is debatable whether Respondent's postings, by themselves, go far enough to establish an attempt to traffic FAP benefits.

MDHHS assumed that the owner of the Twitter account is the same person in the photographs associated with the Twitter account. It is acknowledged that persons with social media accounts generally post pictures of themselves.

MDHHS evidence linking Respondent to the Twitter account involved in the alleged FAP trafficking was not overwhelming. Generally, it is inappropriate to expect administrative judges to make findings concerning identity based on a resemblance between photographs. For such evidence to be insightful, presented photos should be accompanied by a facial recognition software report or statements from experts in the field of facial recognition; no such evidence was presented. It is acknowledged that Respondent's Secretary of State photograph resembled photographs from the Twitter account in the alleged attempted FAP trafficking.

Presented evidence requires inferring multiple conclusions. For trafficking to be established, the following must be inferred:

- presented social media evidence was not forged;
- presented social media evidence concerned purchases of FAP benefits;
- presented social media statements went far enough to establish an attempt to purchase FAP benefits;
- presented social media photographs belonged to the owner of the Twitter page; and
- presented social media photographs sufficiently resembled Respondent's Secretary of State photograph.

Each inference required to clearly establish FAP trafficking was supported to a reasonable degree, some more than others. Given presented evidence, MDHHS left too much total doubt for a finding that Respondent clearly and convincingly attempted to traffic FAP benefits.

It is found that MDHHS failed to clearly and convincingly establish that Respondent trafficked FAP benefits. Accordingly, MDHHS may not impose an IPV disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV related to an attempted purchase of FAP benefits. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

CG/hw



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]