



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 19, 2018
MAHS Docket No.: 17-013845
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 January 11, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

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 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 (FAP)?

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 September 8, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility that the attempt to buy FAP benefits from other recipients is prohibited by federal regulation and Department policy and that FAP recipients are not allowed to traffic their food assistance benefits.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, p. 42.
6. The Department's OIG indicates that the time period it is considering the fraud period is June 7, 2016 through January 19, 2017 (fraud period).
7. This was Respondent's **first** alleged IPV.
8. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services 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 October 1, 2014, 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 \$500.00 or more, or
- the total amount is less than \$500.00, 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 (January 2016), p. 12-13.

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 (October 2016), 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.

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 M Civ JI 8.01.

The Department alleged that Respondent committed a FAP IPV by trafficking when she offered to purchase FAP benefits via 19 separate Facebook posts between June 7, 2016 and January 10, 2017. Exhibit A, pps. 10-31. An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 2016), p. 1. The definition of trafficking under Department policy includes, in relevant part, “attempting to buy . . . FAP benefits for cash or consideration other than eligible food.” BAM 700

(October 2016), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2017), p. 66. This is consistent with the definition in the federal regulations which define trafficking to include “attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” 7 CFR 271.2. The Department must establish an IPV by clear and convincing evidence. BAM 720, p. 1; 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 M Civ JI 8.01. It must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010). Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Id.*

The Department argues that a social media post offering to buy FAP benefits alone establishes trafficking and that proof of an actual exchange of benefits for cash or consideration is not required. In support of its position, the Department noted that both Department policy and the federal regulations define trafficking to include “attempting to buy” FAP benefits. The Department also relies on the October 4, 2011 memo from the United States Department of Agriculture (USDA) to States providing guidance on IPV’s resulting from the use of websites and social media in selling, or intending to sell, FAP benefits. The memo specifically provides that an individual’s verbal offer of sale to another individual or the online posting of an electronic balance transfer (EBT) card for sale violates federal food assistance program regulations and constitutes an IPV under 7 CFR 273.16(c)(2) (which defines trafficking). (Exhibit A, pp. 21-22.)

In the scenario in the USDA memo, the individual attempting to sell FAP benefits has benefits to sell and, as such, has the potential to follow through with the offer to sell. The instant case involves an alleged attempt to buy FAP benefits.

However, a review of the evidence in this case showed that the Department presented 19 separate online Facebook posts from June 7, 2016 and January 10, 2017 from a Facebook account the Department established was Respondent’s. In the posts, Respondent asked variations of “Any stamps inbox,” p. 10; “Who still got stamps or get them this week I need sum for by baby party inbox me,” p. 11; “bridge card date coming who selling stamps inbox”, p. 11” and “we need groceries we don’t have nothing I need a bridge card.” P. 12. The Facebook posts also include multiple posts throughout stating that Respondent needed a bridge card. Such statements over the course of seven months are sufficient to show an active intent to purchase FAP benefits. In addition the Department also offered evidence that the Respondent applied for FAP benefits on December 23, 2015, was advised that trafficking of FAP was prohibited and was a FAP recipient for the March 2016 through January 31, 2017. Exhibit A, pps. 35-39. In addition when applying for FAP benefits, all recipients are provided a Pamphlet by the Department that advises them regarding what FAP benefits may be used for and what is prohibited. Exhibit A., p. 58-77. The evidence presented was sufficient to establish, by clear and convincing evidence that Respondent had engaged in an

attempt to buy FAP benefits via social media. Thus, Respondent engaged in FAP benefit trafficking.

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving FAP program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. Because this was Respondent's first alleged FAP IPV, she is disqualified from FAP for a one-year period.

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, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.

The Department is ORDERED to personally disqualify the Respondent from the receipt of Food Assistance for a period of 12 months as result of having been found to have committed an IPV of her FAP benefits.

LF/cg



Lynn M. Ferris

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

Via Email:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]