



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 18, 2018
MAHS Docket No.: 17-010816
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND
ESTABLISHMENT OF AN OVERISSUANCE**

Upon the request for a hearing by the 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, 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 April 9, 2018, from Detroit, Michigan. MDHHS was represented by [REDACTED], regulation agent with the Office of Inspector General. Respondent did not appear. The hearing was held at least 30 minutes after the scheduled hearing time. The record was closed at the end of the hearing on the scheduled hearing date.

ISSUES

1. The first issue is whether MDHHS established, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV).
2. The second issue is whether Respondent should be disqualified from receiving Food Assistance Program (FAP) benefits for one year.
3. The third issue is whether Respondent received an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup.

FINDINGS OF FACT

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

1. Respondent was an ongoing FAP benefit recipient.

2. On May 23, 2016, over \$[REDACTED] in FAP benefits were spent on Respondent's Electronic Benefit Transfer (EBT) card.
3. On May 24, 2016, Respondent requested a new EBT card.
4. On June 8, 2016, a Facebook post was made which stated, in part, "I tried helping a friend out and let her grocery shopping with MY FOODSTAMPS and she turned around and spent 300 dollars off of it, ignored my calls and texts and when I called to check my balance on the card there was a 0 balance."
5. On an unspecified date, the same Facebook account posted, "Or like I let her buy food stamps the other day. And she never brought my card back. And when I called to check my balance I had 0 dollars out of 300 to begin with!! She gave me 20 dollars for damn near 300 dollars in fs. Lol." A later post stated, "... all I want is the other 20 she owes me and I cant even get that? Lol like what?"
6. The Facebook posts came from an account nickname which precisely matched Respondent's name.
7. The "Lives in..." city from the Facebook accounts at issue matched Respondent's city of residence from the time of June 2016.
8. Photographs of a person from the Facebook account were reasonably consistent with Respondent's photograph from the Secretary of State.
9. On July 20, 2017, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on attempted trafficking and/or trafficking of \$[REDACTED] in FAP benefits.
10. As of MDHHS' hearing request date, Respondent has no prior history of IPV's.

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, in part, to establish that Respondent committed an IPV. [MDHHS] may request a hearing to establish an intentional program violation, a disqualification, or a debt.... BAM 600 (January 2018), p. 5.

MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by selling FAP benefits. MDHHS made similar or identical allegations as listed on an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated July 20, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

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 (October 2017), p. 1. Trafficking is [established by one of the following]:

- The buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.
- The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for FAP benefits.
- Purchasing a product with FAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount
- Purchasing a product with FAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with FAP benefits in exchange for cash or consideration other than eligible food.
- Intentionally purchasing products originally purchased with FAP benefits in exchange for cash or consideration other than eligible food.
- Attempting to buy, sell, steal, or otherwise affect an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

BAM 700 (January 2018), 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. BAM 720 (October 2017), p. 1. 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 presented a paper copy of a Facebook post dated June 8, 2016, which stated, in part, "I tried helping a friend out and let her grocery shopping with MY FOODSTAMPS and she turned around and spent 300 dollars off of it, ignored my calls and texts and when I called to check my balance on the card there was a 0 balance." MDHHS also presented Facebook posts from the same account nickname which stated, in part, "Or like I let her buy food stamps the other day. And she never brought my card back. And when I called to check my balance I had 0 dollars out of 300 to begin with!! She gave me 20 dollars for damn near 300 dollars in fs. Lol." A third post stated, "... all I want is the other 20 she owes me and I cant even get that? Lol like what?"

A literal reading of the Facebook posts is consistent with someone complaining about getting taken advantage of in an agreement with a friend concerning FAP benefits traded for cash. Social media posts are not always intended to be taken literally. Respondent's three posts, taken together, clearly and convincingly established that her posts were intended to be literally taken.

Establishing an IPV from a social media post requires acceptance that the social media account holder associated with the post is the same person making the post. It is theoretically possible that someone may hijack or borrow another's account to make unwanted posts. In the present case, Respondent did not present any evidence alleging such hijacking or borrowing of her Facebook account. Presented evidence was also not indicative that any such hijacking or borrowing occurred.

MDHHS presented a document (Exhibit A, p. 13) containing various pieces of information associated with Respondent and the Facebook account at issue. A Facebook user name associated with the Facebook post was listed. A photograph of an individual was taken from the Facebook page. A Michigan State Police booking photograph of Respondent was shown; a regulation agent testified that the photograph was obtained from Respondent's information in the MDHHS database. A "Lives in..." city for the Facebook account making the posts at issue was listed.

Finding that Respondent attempted to traffic requires linking Respondent to the Facebook posts. The Facebook account nickname was Respondent's precise first and last name. The photograph from the Facebook page was reasonably consistent with Respondent's Michigan State Police photograph. The "Lives in..." city from the Facebook page also matched Respondent's city of residence. This evidence was very consistent with finding that Respondent was the person making the Facebook posts at issue.

MDHHS presented Respondent's EBT expenditure history (Exhibit A, p. 13). The history listed that \$ [REDACTED] of Respondent's benefits were spent on May 23, 2016. The expenditures were consistent with the Facebook poster's complaint that a friend used

\$█ in FAP benefits. Respondent's EBT history is further consistency that Respondent was the author of the Facebook post and that a literal reading of the Facebook post was intended.

MDHHS presented Respondent's FAP issuance history (Exhibit A, p. 18). Respondent's FAP issuance for June 2017 was \$█ Respondent's FAP history was consistent with Respondent having over \$█ in FAP benefits to traffic.

The evidence sufficiently established that Respondent was the Facebook account holder at issue. The evidence further established that Respondent's Facebook post was a confession that she traded FAP benefits for cash. Thus, it is found that MDHHS established that Respondent trafficked FAP benefits.

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 one-year disqualification period is justified. The analysis will proceed to determine if an OI was established.

For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2018) pp. 1-2. 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.

BAM 720 (October 2017) p. 8.

MDHHS alleged that Respondent trafficked \$█ in FAP benefits. The OI amount appears to be based on the EBT benefits used by Respondent's friend. The FAP benefits stolen by a friend are not an appropriate basis to calculate an OI. Per BAM 700, the FAP benefits that were "stolen, traded, bought, or sold" establish the OI amount. Respondent's complaints that her friend stole FAP benefits clearly establish that she did not sell \$█ in FAP benefits.

Based on Respondent's Facebook posts, she received \$█ and she wants "the other \$20". Respondent's Facebook statements were consistent with finding that Respondent intended to receive \$█ in cash in exchange for an unspecified amount of FAP benefits.

Respondent's Facebook posts complained of "being nice" and "trying to help out" a friend. If Respondent was "being nice" by trafficking FAP benefits, it can be inferred that Respondent's friend received at least \$█ in FAP benefits, and likely more. How much more cannot be established due to a lack of evidence. Based on the evidence, MDHHS established an OI of \$█

DECISION AND ORDER

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV by attempting to traffic FAP benefits. The MDHHS request to establish a one-year disqualification based on an IPV against Respondent is **APPROVED**.

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent trafficked \$█ in FAP benefits. It is also found that MDHHS did not establish that Respondent trafficked an additional \$█ in FAP benefits. The MDHHS request to establish an overissuance against Respondent is **PARTIALLY APPROVED**.

CG/



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]
[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
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