



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 3, 2018
MAHS Docket No.: 17-014215
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 March 28, 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. There was no indication that Respondent did not receive notice of the hearing. 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 September 6, 2016, a Facebook post stating, "Bridge card for sale 190 for 120" was made. A following comment stated, "That's a rip off [emoji omitted]"; the account holder responded, "... free money... I'll spend it either way [smiling emoji]". The first commenter responded back, "Naw I'm saying lol why you not doing half on the dollar"; the account holder responded, "Hell naw I'll keep it that's the case I don't need to sell it Lol".
3. The Facebook post came from an account nickname which precisely matched Respondent's name.
4. Photographs from the Facebook account were reasonably consistent with Respondent's photograph from the Secretary of State.
5. On September 28, 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.
6. 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 or attempting to sell FAP benefits on social media. The allegations were consistent with an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated September 28, 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 stating "Bridge card for sale 190 for 120". The post was dated September 6, 2016. A response followed and stated, "That's a rip off [emoji omitted]"; the account holder responded, "... free money... I'll spend it either way [smiling emoji]". The original holder responded back, "Naw I'm saying lol why you not doing half on the dollar"; the account holder responded, "Hell naw I'll keep it that's the case I don't need to sell it Lol".

A literal reading of the Facebook post is consistent with an attempt to traffic benefits. Social media posts are not always intended to be taken literally. Sometimes the comments following posts can be helpful in identifying the intent of a post; the comments following the post were consistent with applying a literal interpretation of the Facebook post at issue. The Facebook post at issue was one that it is difficult to imagine a figurative or joking context. The evidence sufficiently established that the poster intended to traffic FAP benefits.

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 any such hijacking or borrowing. 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 account name associated with the Facebook post was listed. A photograph of a single individual was taken from the Facebook page. A Secretary of State photograph of Respondent was shown; a regulation testified that the photograph was obtained from Respondent's information in the MDHHS database.

Finding that Respondent attempted to traffic requires linking Respondent to the Facebook post. The Facebook account nickname was Respondent's precise first and last name. The presented photograph presented from the Facebook page was reasonably consistent with Respondent's Secretary of State photograph.

The evidence sufficiently established that Respondent was the Facebook account holder at issue. The evidence further established that Respondent's post was an attempt to traffic FAP benefits.

MDHHS presented Respondent's FAP issuance history (Exhibit A, p. 17). Various monthly issuances from April 2015 through March 2017 were listed. Respondent's FAP history was consistent with Respondent having \$[REDACTED] in FAP benefits to traffic.

The Facebook post attempting to traffic benefits included an amount of \$[REDACTED] of FAP benefits for sale. Evidence of a completed transaction was not presented. The social media post, by itself, was sufficient to establish an attempt to sell \$[REDACTED] in FAP benefits. Thus, it is found that Respondent committed an IPV by attempting to traffic \$[REDACTED] in 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.

It was found above that Respondent attempted to traffic \$ [REDACTED] in FAP benefits. The finding justifies finding that Respondent received an OI of \$ [REDACTED]

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 \$ [REDACTED] in FAP benefits. The MDHHS requests to establish a one-year disqualification based on an IPV and an OI of \$ [REDACTED] against Respondent are **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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