



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 4, 2018
MAHS Docket No.: 17-014081
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 April 12, 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 FAP benefits for 12 months?

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 25, 2017, to establish that Respondent allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits.

3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility not to engage in the trafficking of FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is September 27, 2010 through June 7, 2016 (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 or more, or
 - the total amount is less than \$500, 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), pp. 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 (January 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.

Additionally, in September 2010, October 2011 and March 2013, trafficking was defined as the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700 (July 2010, January 2011, February 2013), p. 1.

However, by May 2016, trafficking was defined as (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits and (iv) ***attempting*** to buy, sell, or steal FAP benefits for cash refund deposits. BAM 700 (January 2016), p. 2. [Emphasis added].

In the present case, the Department alleges that Respondent committed an IPV of FAP benefits based on his alleged social media post (Facebook) offering to sell FAP benefits on January 23, 2017. The Department testified that Respondent submitted an application on October 17, 2016, in which he acknowledged that he understood the rules associated with all programs including the receipt of FAP benefits. According to the Department the information contained in the application included the prohibition of trafficking benefits and the consequences if an individual engages in the trafficking of benefits.

The Department presented evidence to show that on multiple occasions, Respondent attempted to buy FAP benefits. Respondent made the following post to her Twitter account on the following days:

can i buy some stamps? - September 27, 2010
Can i buy some stamps - January 19, 2011
Anybody selling some stamps ? - February 11, 2011
Who selling some stamps this month - October 5, 2011
Can I buy some food stamps #SeriousTweet - October 12, 2011
Anybody selling some stamps - March 3, 2013
Anybody selling food stamps - May 31, 2016
Woke put my sleep to buy these food stamps - July 3, 2016

Respondent's post show a history of attempting to engage in the trafficking of FAP benefits. The Department presented photos of Respondent in order to show that the social media post was in fact of Respondent's (comparing social media photo to the photograph listed with the Michigan Secretary of State). Respondent failed to appear at the hearing and thus failed to provide an alternate explanation for the post other than the attempted purchase of FAP benefits. Accordingly, it is found that the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits based on her attempt to trafficking FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (January 2016), p. 15. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12-month disqualification under the FAP program.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department indicated that it was not seeking an overissuance in this matter as Respondent did not request to buy a specified amount of FAP benefits.

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:

The Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

It is FURTHER ORDERED that Respondent is subject to a 12-month disqualification from FAP benefits.

JAM/tlf



Jacquelyn A. McClinton
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:



Respondent – Via First-Class Mail:

