



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 25, 2018
MAHS Docket No.: 17-016434
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 24, 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 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 November 14, 2017, to establish respondent committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a member of a group that received FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to use FAP benefits for lawful purposes.
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 August 3, 2016 (fraud period).
7. The Department was not seeking an overissuance related to the matter.
8. This was Respondent's first alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 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), pp. 7-8; 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.

In this case, the Department alleges that Respondent committed an IPV by offering to sell FAP benefits to another individual through a posting on his Facebook account. Trafficking is (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; and (iii) purchasing containers with deposits,

dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (May 2014), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2015), p. 66. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2015), p. 3. The federal regulations 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.

In support of its contention that Respondent committed an IPV, the Department submitted an application submitted by Respondent on September 13, 2014. The Department asserts that when completing the application process, Respondent acknowledged that he had received the Information Booklet advising him regarding “Things You Must Do” which explained that clients must use their FAP benefits for lawful purposes.

Additionally, the Department presented a Facebook post made on August 3, 2016 by an individual by the name of “██████████” which stated, “who selling they bridge card?” An individual with the screenname “██████████” responded, “Ill have one for sale tomorrow.” The Department presented evidence showing that ██████████ ██████████ Facebook account ID was ██████████. The profile information for ██████████ showed that his birthdate was listed as March 31. Additionally, the Department presented the Facebook profile for the account ID ██████████ at a later date when the investigation occurred which showed the screenname had been changed to ██████████.

The Department presented an application submitted by Respondent on September 13, 2014. The application shows that Respondent’s middle initial was listed as █ and that his date of birth is March 31, 1992. The Department also presented a screenshot of Respondent’s Secretary of State photo ID. The Department contends that the Facebook photographs linked to the ██████████ Facebook profile matches the individual in the Secretary of State photograph.

Given that Respondent’s full name and date of birth matches the information in the Facebook profile, the Department presented sufficient evidence to show that it was Respondent’s Facebook profile. The verbal offer of sale to another individual is evidence that the Respondent committed an IPV. Thus, the Department provided clear and convincing evidence that Respondent trafficked FAP benefits and committed an IPV.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV

cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

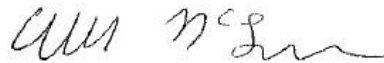
As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this is Respondent's first IPV, Respondent is subject to a one-year disqualification from his receipt of FAP benefits.

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.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months.

EM/cg



Ellen McLemore
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) 763-0155; 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]