



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED] - [REDACTED]

Date Mailed: June 6, 2018
MAHS Docket No.: 17-016377
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE**

Upon the request for a hearing by the Michigan 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 scheduled for May 23, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Daniel Beck, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

FINDINGS OF FACT

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

1. On March 5, 2017, Respondent electronically submitted an application for FAP benefits to MDHHS. Respondent reported he was not disabled. Respondent listed a phone number and birthdate. (Exhibit A, pp. 17-33)

2. On July 7, 2016, a Facebook (FB) account holder posted, "\$1,800 on a bridge card who need it". The FB account holder posted a phone number which matched the phone number from Respondent's FAP application. Subsequent responses to the FB posting included "Let me buy \$100", "call me", and "Hold on I need like 900 right now. Cash on delivery". The responses also included the FB account holder's commented that he had \$1,000 left (Exhibit A, pp. 37-38).
3. The FB account profile listed a city of residence which matched Respondent's reported city of residence from his application. (Exhibit A, p. 40)
4. On January 16, 2017, a FB comment wished the FB holder a happy birthday; the date matched Respondent's birthdate from his application. (Exhibit A, p. 45)
5. The FB account at issue included various photographs (Exhibit A, pp. 47-48). A person from the photographs resembled Respondent's photograph from the Secretary of State (Exhibit A, p. 49).
6. On November 13, 2017, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent for FAP trafficking. MDHHS also sought to establish an OI of \$1,800 in FAP benefits against Respondent. (Exhibit A, p. 1)
7. As of MDHHS' hearing request date, Respondent has no prior history of IPV's. (Exhibit A, pp. 35-36)

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 November 13, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

For FAP benefits, an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. MDHHS goes on to list various scenarios which are considered FAP trafficking; the relevant scenario states that trafficking is established by, “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.” BAM 700 (January 2018), p. 2. MDHHS policy also states that such an attempt is also trafficking. *Id.*

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, “\$1,800 on a bridge card who need it”. Subsequent responses to the comment included various offers of purchase. (Exhibit A, pp. 37-38)

A literal reading of the Facebook post is consistent with an attempt to sell EBT 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.

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. The evidence sufficiently established that the FB account holder intended to traffic FAP benefits.

MDHHS linked Respondent to the FB post through various pieces of evidence. Photos of a person from the FB profile at issue were reasonably consistent with Respondent’s Secretary of State photo. Respondent and the FB poster both reported residency in the same city. Respondent and the FB account holder appeared to have the same birthday. The phone number posted in the post offering to sell FAP benefits matched Respondent’s reported phone number. The FB account name also happened to include Respondent’s first and middle name. The evidence sufficiently identified Respondent as the FB account holder at issue.

The evidence established that Respondent's post was an attempt to traffic \$1,800 in FAP benefits. The evidence further established that Respondent was the Facebook account holder at issue. Based on the evidence, it is found that Respondent did or attempted to traffic \$1,800 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 did or attempted to traffic \$1,800 in FAP benefits. The finding justifies a further finding that Respondent is responsible for an OI of \$1,800 in FAP benefits.

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 trafficking or attempting to traffic \$1,800 in FAP benefits. The MDHHS requests to establish a one-year disqualification and an OI of \$1,800 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) 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

DHHS

Latasha McKinney-Newell
MDHHS-Wayne-19-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS