STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

[redacted]
MI [redacted]

Date Mailed: June 14, 2018
MAHS Docket No.: 17-016812
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 June 12, 2018, from Lansing, Michigan.

The Department was represented by Darren Bondy, Regulation Agent of the Office of Inspector General (OIG). Petitioner's Exhibits 1-30 were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

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 Food Assistance Program (FAP) benefits for 12 months?

3. Did the Department establish an over issuance (OI) of FAP benefits?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on December 12, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The local office conducted a social media search and found [redacted] (a.k.a. [redacted]) posted on Facebook, "Got 4 for sale with the yamps inbox me".

3. The comments show those interested in the post as well as [redacted] responding to the comment, "How many you got [redacted]" with, "[redacted] 400 for half".

4. Client does not have an open FAP and did not have an open FAP at the time of post. Client had applied in April of 2017, and his case closed on September 30, 2017. However, client has been on the case of [redacted], and [redacted] had been on client's case until it closed. [redacted] opened her own FAP case after client's closed. The two have children in common. OIG has had several FEE investigations involving both client's cases and group composition. Client does not have any disabilities identified in Bridges.

5. Attempts made to contact client, phone and email. Client did not contact OIG prior to submission for hearing. Packet sent to client's case address.

6. On an April 1, 2017, electronic application Respondent reported no physical and/or mental impairments that would limit their understanding or ability to fulfill the requirements for the proper use of food assistance program benefits.

7. The eligibility summary shows the subject received $400.00 in Food Assistance during the alleged fraud period.

8. The fraud period was November 1, 2017, through December 31, 2017.

9. Respondent received FAP in the amount of $400.00. Respondent was entitled to receive $0.00 in FAP benefits.

10. Respondent did not appear and give evidence at the scheduled hearing to rebut the evidence presented by Petitioner in the Hearing Summary and admitted exhibits.

11. This was Respondent's first alleged IPV.

12. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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 January 1, 2016, 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, pp 12-13 (1/1/2016)(Emphasis added).

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, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016).

A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the Food Stamp Act of 1977, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id*. DHHS policy BAM 700-Overissuance: The amount for trafficking-related IPVs is the value of the trafficked benefits (attempted or actually trafficked).

FNS ruled on October 4, 2011, that "an individual who offers to sell their benefits by either making their offer in a public way or posting their EBT card for sale online has committed an IPV." Section 7(b) of the food stamp act and 7 CFR 274.7(a) clearly states posting your EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in and IPV. BAM 720. Intentional Program Violations states that “IPV is suspected for a client who is alleged to have trafficked FAP benefits”. MCL 750.300a, BEM 203, 7 U.S.C. 2016 A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act of 1977, 7. U.S.C. 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. DHHS Policy BAM 700 defines Overissuance "For FAP benefits, an overisssuance is also the amount of benefits trafficked) stolen, traded bought or sold) or attempted to be trafficked".

Respondent identified posting on Facebook offering FAP benefits. Client posted using Facebook profile ‘[redacted]’, Facebook account ‘[redacted]’, profile unique ID 100010091717177.

Respondent posted “Got 4 for sale with the yamps inbox me”. One subject, [redacted], replied, “How many you got [redacted]”. Client responded “400 for half”. ‘[redacted]’ asked where client was at and also asked him to call her and posted her phone number.

Yamps is one the names used to refer to Bridge card or Food Stamps.

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 2. Clients are disqualified for

ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

The attempted trafficking amount is $400.00. Respondent is responsible for $400.00 (from November 1, 2017-December 31, 2017) of FAP benefits that were trafficked online.

DECISION AND ORDER

This 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:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did solicit for/receive an over-issuance of Food Assistance Program benefits in the amount of $400.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of $400.00 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months beginning June 12, 2018.

LL/bb

Landis Lain
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

Mark Epps
4809 Clio Road
Flint, MI 48504

Genesee County (Clio Road), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[redacted]
MI [redacted]