



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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[REDACTED] MI [REDACTED] - [REDACTED]

Date Mailed: July 24, 2018
MAHS Docket No.: 18-002488
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

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

ISSUE

The issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification against Respondent.

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 February 19, 2017, a Facebook (FB) account name of "[REDACTED]" posted, "Who needs stamps inbox me asap Gotta [sic] them on deck". The poster included a photo of an individual which was reasonably consistent with Respondent's Secretary of State photo (see Exhibit A, p. 20). Various responses to the post included: "I need 200 nephew... call me". (Exhibit A, pp. 9-10)

2. The FB poster listed a profile that stated he was from [REDACTED], Michigan. (Exhibit A, p. 12 and 14)
3. On April 2, 2017, Respondent electronically submitted an application for FAP benefits to MDHHS. Respondent reported he was not disabled. Respondent listed an address in [REDACTED], Michigan. (Exhibit A, pp. 23-33)
4. On March 15, 2018, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent for FAP trafficking. (Exhibit A, p. 1)
5. 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' Hearing Summary and testimony alleged that Respondent committed an IPV by selling or attempting to sell FAP benefits on social media. MDHHS may request a hearing to establish an intentional program violation. BAM 600 (January 2018), p. 5.

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 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** 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. *Id.* 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 FB post stating "Who needs stamps inbox me asap Gotta [sic] them on deck". The post was dated February 19 (no year was indicated) but a regulation agent documented the post was made in 2017 (see Exhibit A, p. 3).

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. The Facebook post at issue was one that it is difficult to imagine a figurative or joking context. At least one response took the offer seriously and requested \$200 as well as a phone number to be contacted. The evidence sufficiently established that the social media poster intended to traffic FAP benefits.

For attempted trafficking via social media to be established, MDHHS must match the social media account holder to Respondent. The FB account at issue included a photo presumed to be of the FB account holder. The photo in the FB account was reasonably consistent with a Secretary of State photo of Respondent (see Exhibit A, p. 20). The FB account holder was from the same city as Respondent. Further, the FB account name at issue matched Respondent's full name from his Secretary of State information.

It is theoretically possible that someone may hijack or borrow another's account to make unwanted posts. In the present case, Respondent did not allege any such hijacking or borrowing. Further, the evidence was not indicative that any such hijacking or borrowing occurred.

The evidence sufficiently established that Respondent was the Facebook account holder at issue. Evidence further established that Respondent's post was an attempt to traffic FAP benefits. Thus, it is found that Respondent committed an IPV by attempting to traffic FAP benefits.


The standard disqualification period is used in all instances except when a court orders a different period. 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. BAM 725 (January 2016), p. 16.

MDHHS did not allege Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

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 FAP benefits. The MDHHS request to establish a one-year disqualification against Respondent is **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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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