



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 13, 2018
MAHS Docket No.: 18-001508
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on July 12, 2018, from Lansing, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP 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 9, 2014, Respondent applied for assistance from the Department, including FAP benefits.
2. In the application Respondent submitted on March 9, 2014, the Department advised Respondent that he "may be guilty of fraud/IPV if you trade, attempt to trade or sell your FAP benefits or Bridge card online or in person."

3. In the application Respondent submitted on March 9, 2014, Respondent identified himself as a black or African American male with a date of birth of [REDACTED] [REDACTED] 1993. Respondent identified his mailing address as a location in [REDACTED]
4. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
5. On February 17, 2017, the Department issued a lump-sum of \$3,120.00 in FAP benefits to Respondent pursuant to a Federal court order in *Barry v Lyon*.
6. On March 10, 2017, an individual identified as [REDACTED] made a tweet on Twitter that indicated he received a lump-sum issuance of FAP benefits. The individual's Twitter account indicated that its creator was from Detroit and showed a picture of him which appeared to be a young black or African American male. The individual had received a "happy birthday" comment from another user on [REDACTED] [REDACTED]
7. "[REDACTED]" was also used on Instagram and Twitter. The Facebook profile for "[REDACTED]" indicated that its creator was a black or African American male from [REDACTED] with a birthdate of [REDACTED] [REDACTED] 1993.
8. On March 23, 2017, "[REDACTED]" made a tweet on Twitter that stated, "I got 7500 g's in bridge card for sale. I want 4 thousand. Dm me nothing more nothing less. Keep ya weak credit card #s I only want \$\$\$."
9. The Department discovered the tweet offering to sell FAP benefits and initiated an investigation.
10. The Department identified Respondent as the person who made the tweet offering to sell FAP benefits. The Department had the Michigan State Police perform a facial recognition analysis, which provided a lead to Respondent. The Department corroborated the lead with the information shared on social media accounts associated with "[REDACTED]" because they identified an individual with the same birthdate as Respondent.
11. On February 16, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
12. A notice of hearing was mailed to Respondent at his last known address and it was not returned by the United States Postal Service as undeliverable.
13. The OIG requested a recoument of \$7,500 in FAP benefits for the amount trafficked and that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), 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.

Intentional Program Violation

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 1, 2016), p. 1.

Trafficking is:

- The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.
- Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

BAM 700 (October 1, 2016), p. 2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. BAM 720, p. 1; see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. The Department presented sufficient evidence to establish that Respondent and the Twitter user known as "██████████" were one and the same individual. Respondent made a tweet on Twitter through ██████████ on March 23, 2017, which stated, "I got

7500 g's in bridge card for sale. I want 4 thousand. Dm me nothing more nothing less. Keep ya weak credit card #s I only want \$\$\$." Respondent's post clearly conveyed his intent to sell FAP benefits for consideration other than eligible food. Therefore, the Department established that Respondent made a tweet in an attempt to sell FAP benefits.

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 ten 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.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The OI amount for trafficking-related IPV's is the value of the trafficked benefits (attempted or actually trafficked) as determined by: (1) a court decision; (2) the individual's admission; or (3) 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. BAM 720, p. 8. This can be established through circumstantial evidence. BAM 720, p. 8. In this case, the Department established that Respondent trafficked FAP benefits valued at \$7,500.00 when he made a tweet on Twitter seeking \$4,000.00 for \$7,500.00 worth of FAP benefits. Thus, Respondent received an overissuance of \$7,500.00.

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:

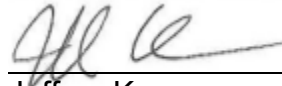
1. Respondent received an overissuance of FAP benefits in the amount of \$7,500.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.

3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$7,500.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of one year.

JK/nr



Jeffrey Kemm
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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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