



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 30, 2018
MAHS Docket No.: 18-001794
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 26, 2018, from Lansing, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Respondent, Jessica Walker, appeared and represented herself.

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 November 7, 2012, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, p. 27.
2. In the application Respondent submitted on November 7, 2012, the Department advised Respondent that she "may be guilty of fraud/IPV if you trade or sell your FAP benefits or Bridge card." Exhibit A, p. 46.

3. After Respondent applied for benefits, the Department sent Respondent a pamphlet titled Important Things to Know (DHS-PUB-1010) and a brochure titled How to Use Your Bridge Card.
4. The Things to Know pamphlet advised Respondent that trading or selling FAP benefits was considered FAP trafficking.
5. The How to Use Your Bridge Card brochure advised Respondent that misuse of food benefits is a violation of law, including trading or selling FAP benefits.
6. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
7. On May 12, 2014, Respondent made a post on Facebook in which she tried to sell FAP benefits. Respondent stated, "200 to 120." Exhibit A, p. 13.
8. On April 16, 2016, Respondent made a post on Facebook in which she stated she had sold FAP benefits. Exhibit A, p. 13.
9. On December 11, 2017, Respondent made posts in four different groups on Facebook in which she tried to sell FAP benefits. Respondent stated, "Who need stamps \$100." Exhibit A, p. 12.
10. The Department conducted an investigation when it discovered the Facebook posts by Respondent's Facebook account.
11. The Department determined that the Facebook account involved in the posts was Respondent's because the account profile identified the account creator's mother as [REDACTED] and Respondent had previously been associated with [REDACTED] on a Bridges case in which she was listed as Respondent's mother. The Department also compared the profile photos on the Facebook account to Respondent's photos on file with the Secretary of State and the Michigan State Police to verify her identity.
12. On February 28, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
13. The OIG requested recoupment of a \$200.00 overissuance of FAP benefits for the value of the benefits trafficked, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
14. A notice of hearing was mailed to Respondent at her last known address and it 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), 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 (May 1, 2014), p. 1.

Trafficking is:

- The buying or selling 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.

BAM 700 (May 1, 2014), 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. Respondent made posts on Facebook in an attempt to sell FAP benefits. The attempted sale of FAP benefits must be considered trafficking because it is an attempt to use FAP benefits to obtain consideration other than eligible food items.

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. In general, Clients are disqualified 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

An overissuance is the amount of FAP benefits trafficked. BAM 700, p. 1. The overissuance amount for trafficking-related IPV's is the value of the trafficked benefits 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 \$200.00 or more when she made posts on Facebook attempting to sell FAP benefits. Thus, the Department presented sufficient evidence to establish an overissuance of \$200.00.

DECISION AND ORDER

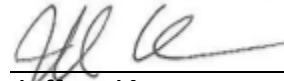
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$200.00 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 \$200.00 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

Latasha McKinney-Newell
26355 Michigan Ave.
Inkster, MI
48141

Wayne 19 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]