[redacted]
MI [redacted]

Date Mailed: July 30, 2018
MAHS Docket No.: 18-002492
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 Daniel Beck, 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 August 15, 2016, Respondent applied for assistance from the Department, including FAP benefits. In her application, Respondent listed her email address as: [redacted] Respondent listed her city of residence as Detroit, and Respondent listed two children with birthdays on [redacted] Exhibit A, p. 12-34.

2. After Respondent applied for benefits on August 15, 2016, the Department sent Respondent a pamphlet titled Important Things to Know (DHS-PUB-1010) and a brochure titled How to Use Your Bridge Card.

3. The Things to Know pamphlet advised Respondent that trading or selling FAP benefits was considered FAP trafficking. Exhibit A, p. 61.

4. 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. Exhibit A, p. 77.

5. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.

6. On March 12, 2017, an individual identified as [redacted]" made a Facebook post that stated, "Y'all gonna give me the fuckin orange card or not? Come on somebody selling one." Respondent then commented on the same post, "I need 200 worth. I'll take a hundred tho." Exhibit A, p. 38.

7. The Facebook profile of [redacted] identified its creator's city of residence as Detroit. The Facebook user, [redacted] posted on February 11 that her kids were having birthdays the following day. Exhibit A, p. 50.

8. The Department conducted an investigation when it discovered the Facebook posts by [redacted].

9. The Department determined that the Facebook account involved in the posts was Respondent's because the account profile used the same name as Respondent, the profile identified the same city of residence as Respondent, and the user made a post that identified two of her children had birthdays on February 12 which matched the information Respondent provided in her application. The Department also compared the profile photos on the Facebook account to Respondent's photo on file with the Secretary of State to verify her identity.

10. On March 14, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.

11. 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.

12. 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 (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. Respondent made posts on Facebook in an attempt to buy FAP benefits. The attempted purchase of FAP benefits meets the definition of trafficking. FAP benefits are intended to be used only to purchase eligible food items; they are not intended to be exchanged for anything 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 or attempted to be trafficked. BAM 700, p. 1-2. The overissuance amount for trafficking-related IPVs 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 a post on Facebook attempting to purchase FAP benefits worth $200.00. 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

**Petitioner**

OIG
PO Box 30062
Lansing, MI
48909-7562

Wayne 17 County DHHS- via electronic mail

MDHHS Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Tara Roland 82-17
8655 Greenfield
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**Respondent**

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