



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: July 3, 2018
MAHS Docket No.: 17-015485
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 6, 2018, from Lansing, Michigan.

The Department was represented by Nicholas Sultana, Regulation Agent of the Office of Inspector General (OIG). Mr. Sultana testified on behalf of the Department. The Department submitted 92 exhibits which 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 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 for 12 months?

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 4, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits for 12 months. [Dept. Exh. 4-5].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 4].
4. Respondent was aware of the responsibility to not traffic FAP benefits indicated by his signature on his FAP application dated October 13, 2013. [Dept. Exh. 33-55].
5. Respondent did not have an apparent mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 41].
6. On August 14, 2016, Respondent posted on her "[REDACTED]" Facebook account, "Anyone wanna place an order with a bridgcard? I need one like NOW or this week. This is a ONE TIME offer! I need \$200-\$300 and I will do a FULL table set up! (NOT VALID IF YOU HAVE AN ORDER ALREADY PLACED!) serious person only! Text me [REDACTED]." Respondent received a response stating, "thought u didn't take that..#oh dat was last month...lol." Respondent replied, "tell7 mile b unc Tk dare soon". [Dept. Exh. 11].
7. A Bridges inquiry of Respondent's name, [REDACTED], shows she had an active assistance case during the alleged fraud period. Respondent reported a physical impairment and some college education. The eligibility summary shows she received \$771.00 a month in Food Assistance during the alleged fraud period. [Dept. Exh. 4].
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$300.00. [Dept. Exh. 1, 4-5].
9. This was Respondent's first alleged IPV. [Dept. Exh. 1, 4-5].
10. A notice of hearing was mailed to Respondent at the last known address and was 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 October 1, 2017, the Department's OIG requests IPV hearings for the following cases:

- 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 (10/1/2017).

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 720, p 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1. An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p 1 (emphasis in original); see also 7 CFR 273(e)(6). 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.

Trafficking is defined as 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, p 2 (1/1/2018).

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. 7 CFR 274.7(b) of the Food Stamp Act. Posting your EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in an IPV. 7 CFR 274.7(a).

In addition, 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, is guilty of the crime of Food Assistance Program (FAP) trafficking. MCL 750.300(a).

In this case, Respondent attempted to sell FAP benefits by offering to sell food stamps on Facebook. Respondent posted "Anyone wanna place an order with a bridge card? I need one like NOW or this week. This is a ONE TIME offer! I need \$200-\$300 and I will do a FULL table set up! (NOT VALID IF YOU HAVE AN ORDER ALREADY PLACED!) serious person only! Text me [REDACTED]." Respondent received a response stating, "thought u didn't take that..#oh dat was last month...lol." Respondent replied, "tell7 mile b unc Tk dare soon". The OIG interviewed Respondent who indicated she had made the post as a joke and would never attempt to buy food stamps. Respondent was identified by the OIG by the "selfies" posted on Facebook that matched Respondent's State of Michigan license.

Overissuance

For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or **attempted** to be trafficked. BAM 700, pp 1-2, emphasis added. The undersigned Administrative Law Judge finds that Respondent trafficked FAP benefits by attempting to obtain benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2) in the amount of \$300.00.

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 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. 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, Respondent attempted to traffic FAP benefits. This was Respondent's first IPV; therefore, a 12-month disqualification is required.

DECISION AND ORDER

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

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$300.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$300.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP benefits for a period of 12 months.

VLA/hb



Vicki Armstrong
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 County (District 19), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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