STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

[redacted]
[redacted], MI [redacted]4

Date Mailed: August 2, 2018
MAHS Docket No.: 18-001637
Agency No.: [redacted]
Petitioner: OIG
Respondent: [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 July 3, 2018, from Lansing, Michigan.

The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Ms. McClellan testified on behalf of the Department. The Department submitted 57 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 February 21, 2018, 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].

3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 4].

4. Respondent did not have an apparent mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 4].

5. On July 17, 2016, Respondent posted on her [redacted] Facebook Page, "Anybody know somebody who need sum food stamps hit me up". After several responses, Respondent posted, "Its 200 for 150 or 300 for 250 that half shyt don't get it I'm ready whenever." [Dept. Exh. 13].

6. On December 15, 2017, Respondent posted on her [redacted] Facebook page, "I got the orange card 200 for 130$". [Dept. Exh. 12].

7. The OIG viewed Respondent's Facebook profile page. The Facebook profile indicates that Respondent is from and currently resides in Detroit. A Facebook posted by Respondent states, "Happy bday to me and thank u for all the bday wishes love yall." [Dept. Exh. 4].

8. A Bridges search of Respondent shows a birthdate of [redacted]/1993. Photographs that were posted on Respondent's Facebook profile were compared with Michigan State Police using individual information for Respondent found in Bridges. The photographs appeared to be of the same person. [Dept. Exh. 4].

9. A Bridges inquiry of Respondent's name shows she had an active assistance case for a group of three during the alleged fraud period and that she has an 11th grade education level. [Resp. Exh. 4].

10. The Department alleges that Respondent received an OI in FAP benefits in the amount of $500.00. [Dept. Exh. 1, 4-5].

11. This was Respondent's first alleged IPV. [Dept. Exh. 1, 4].

12. 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 on July 17, 2016, “Anybody know somebody who need sum food stamps hit me up”. After several responses, Respondent posted, “Its 200 for 150 or 300 for 250 that half shyt don’t get it I’m ready whenever”. On December 15, 2017, Respondent posted, “I got the orange card 200 for 130$.” The OIG attempted to contact and interview Respondent without success. Respondent was identified by the OIG identifying information on Facebook and by the “selfies” posted on Respondent’s Facebook page that matched Respondent’s Michigan driver’s 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 $500.00.

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 $500.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of $500.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program 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

Deborah Little
5131 Grand River Ave.
Detroit, MI 48208

Wayne County (District 49), 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]