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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 10, 2018
MAHS Docket No.: 18-004488
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 scheduled for September 5, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Philip Giuliani, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUE

The issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification against Respondent.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From November 2015 through November 2016, Respondent received FAP benefits (Exhibit A, pp. 19-20).
2. On an unspecified date, Respondent received a publication from MDHHS which was titled, "How to Use Your Michigan Bridge Card". Statements from the publication included, "DO NOT Sell... your Food Assistance benefits..." and "DO

NOT Use someone else's food benefits or Bridge card for your household.” (Exhibit A, pp. 23-38)

3. On [REDACTED] 2017, a Facebook account holder posted, “...I am officially [REDACTED] today...”. (Exhibit A, p. 17) Respondent was born on [REDACTED]. The Facebook name on the account matched Respondent's name.
4. On February 20, 2017, the Facebook account holder posted, “Where y'all with these 3bands on the bridge card... I need parts hmu I need some stamps... I'm buying as long as y'all selling for half ... hmu”. A post from another Facebook account responded, “I know someone. I'll see if she can look out for u too” and “I got one for you. Let me know if you still need it.” The original Facebook account poster responded, “Hell yeah”, which was followed by the responder posting a phone number. (Exhibit A, p. 9)
5. The Facebook account profile at issue listed a residence of [REDACTED] Michigan. (Exhibit A, pp. 10 and 12)
6. On April 27, 2018, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent for attempted FAP trafficking.

CONCLUSIONS OF LAW

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. MDHHS (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-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS' Hearing Summary and testimony alleged that Respondent attempted to traffic. Specifically, MDHHS alleged that Respondent attempted to purchase FAP benefits through social media.

For FAP benefits, an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. MDHHS goes on to list various scenarios which are considered FAP trafficking; the relevant scenario states that trafficking is established by, “The buying, selling or stealing or otherwise effecting 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 signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.” BAM 700 (January 2018), p. 2.¹

¹ See 7 CFR 271.2 for corresponding federal regulations.

IPV is suspected when there is **clear and convincing** evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (October 2017), p. 1. 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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS presented a paper copy of a Facebook post stating, "Where y'all with these 3bands on the bridge card... I need parts hmu I need some stamps... I'm buying as long as y'all selling for half ... hmu".² A literal reading of the Facebook post is consistent with an intent to buy FAP benefits. The poster included a general description of FAP benefits sought ("parts" which is believed to reference a smaller amount of FAP benefits). The poster also included a general purchase price ("half" which is believed to be a \$.50 per dollar offer). Responses to the post further indicated the poster's sincerity in buying FAP benefits as the poster responded "Hell yeah" when asked if he wanted to purchase FAP benefits.

Establishing an IPV from a social media post requires acceptance that the social media account holder associated with the post is the same person making the post. It is theoretically possible that someone may hijack or borrow another's account to make unwanted posts. In the present case, Respondent did not present evidence alleging any such hijacking or borrowing. Presented evidence was also not indicative that any such hijacking or borrowing occurred. The evidence sufficiently established that the Facebook account holder intended to traffic FAP benefits.

MDHHS linked Respondent to the Facebook post through various pieces of evidence. Respondent and the Facebook poster both reported residency in the same state. Based on the Facebook poster's reported birth date, Respondent and the poster share the same birthdate. The Facebook account name and Respondent also share the same name. The evidence sufficiently identified Respondent as the Facebook account holder at issue.

Given the evidence, it is found that Respondent attempted to traffic FAP benefits by offering to buy FAP benefits on social media. Thus, Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV ... one year for the first IPV ... two years for the second IPV, [and] lifetime for the third IPV. *Id.*


MDHHS did not allege Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

² An OIG agent testified that "hmu" is an abbreviation for "Hit me up."

DECISION AND ORDER

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV by attempting to traffic FAP benefits. The MDHHS request to establish a one-year disqualification against Respondent is **APPROVED**.

CG/



Christian Gardocki
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

MDHHS-OIG-Hearings

DHHS

Tolisha Bates
MDHHS-Macomb-12-Hearings

Respondent

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