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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: October 1, 2018
MAHS Docket No.: 18-005272
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 Clarice Bridges, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

The second 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. On ██████████, 2011, various persons posted birthday wishes to the Facebook (FB) account of ██████████ (hereinafter, "FB Acct Holder"). (Exhibit A, p. 76)

2. On May 5, 2014, FB Acct Holder posted, "Who selling that Bridge card this month???" (Exhibit A, p. 51)
3. On December 4, 2014, FB Acct Holder posted, "And on the 8th day God said sell me your bridge card" (Exhibit A, p. 49).
4. On December 14, 2014, FB Acct Holder posted, "Who got that good bridge card for sell [sic]???" (Exhibit A, p. 48)
5. On February 12, 2015, FB Acct Holder posted, "So yall acting funny with them lil stanking ass bridge cards cause yall got yall taxes back. That's ok. I'll hear from u in April" (Exhibit A, p. 52).
6. On June 11, 2015, FB Acct Holder posted, "Listen... I need either your Netflix or your bridge card. Somebody help" (Exhibit A, p. 51).
7. On December 1, 2015, FB Acct Holder posted, "Let me know if u moving that bridge card baby" (Exhibit A, p. 49).
8. On January 9, 2016, FB Acct Holder posted, "I be needing a bridge card because my son eats an entire box of yogurt per day."
9. On May 2, 2016, FB Acct Holder posted, "But anyway... who got the bridge card" (Exhibit A, p. 50).
10. On December 1, 2015, FB Acct Holder posted, "Let me know if u moving that bridge card baby." (Exhibit A, p. 49)
11. On July 13, 2016, FB Acct Holder posted, "Anybody got a bridge card for sale". In response to an inquiry of, "How much...", [REDACTED] posted, "Anything up to 150".
12. On September 27, 2016, FB Acct Holder posted, "Sell me your bridge card. Thanks." FB Acct Holder was stated to be "of [REDACTED]"
13. On December 30, 2016, FB Acct Holder posted, "I'm so blessed. I finally got a consistent bridge card person. She hit me up every month early to make sure I'm still coming to get it and don't be trying to tax. We like 6 months straight now. Tears of joy."
14. On January 23, 2017, FB Acct Holder posted information for an "All about me" challenge". FB Acct Holder listed a full name which matched Respondent's name.

15. On August 1, 2017, Respondent submitted to MDHHS an electronic application requesting FAP benefits. Boilerplate language stated that trading or selling FAP benefits may result in disqualification. (Exhibit A, pp. 12-42)
16. 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. 82-97)
17. As of an unspecified date, FB Acct Holder listed a birthdate of [REDACTED] and home of [REDACTED] Michigan. (Exhibit A, pp. 67-68)
18. On May 3, 2018, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent for FAP trafficking. MDHHS also requested establishment of recoupment of \$ [REDACTED] for attempted or actual 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 (RTM).

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

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

¹ See 7 CFR 271.2 for corresponding federal regulations.

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 paper copies of various FB posts from FB Acct Holder. Each post, taken literally, suggested that FB Acct Holder was attempting to purchase FAP benefits. At least one post used a specific dollar amount. FB Acct Holder also referenced appreciation for not being “taxed”² from a person he would appear to buy FAP benefits from regularly. Responders to the FB posts often expressed laughter (through emojis) which may have suggested that the poster may have been joking about purchasing FAP benefits. Given the context, the responses appeared to be directed to the poster’s amusing sales pitch rather than a suggestion that the content was not to be taken literally.

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 established Respondent as FB Acct Holder through various pieces of evidence. Respondent and the FB poster both reported residency in the same city and state. Based on FB Acct Holder’s reported birth date, Respondent and the poster share the same birthday. FB Acct Holder’s reported name and Respondent also share the same name. The evidence sufficiently identified Respondent as FB Acct Holder.

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.

For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2018), pp. 1-2. The amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) as determined by:

² Generally, EBT benefits are sold for \$.50 per \$1.00 of EBT benefits. A tax on EBT benefits is understood to be any asking amount beyond 50% of the benefits being sold.

- The court decision.
- The individual's admission.
- 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. This can be established through circumstantial evidence.

BAM 720 (October 2017), p. 8.

Respondent's FB post dated July 13, 2016, stated an intent to purchase up to \$[REDACTED] in EBT benefits. The post amounted to an attempt to traffic \$[REDACTED] in EBT benefits. Thus, MDHHS may recoup \$[REDACTED] from Respondent for the amount of benefits that Respondent attempted to traffic.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on attempted FAP benefit trafficking. It is further found that MDHHS established a basis to recoup \$[REDACTED] in FAP benefits from Respondent. The MDHHS requests to establish recoupment and a one-year disqualification against Respondent are **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

DHHS

Jeanette Cowens
MDHHS-Wayne-41-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS