



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: August 27, 2018  
MAHS Docket No.: 18-005595  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR  
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE**

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 August 15, 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 Jenna McClellan, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUES**

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

The second issue is whether MDHHS established a basis for recoupment related to trafficking of Food Assistance Program (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 February 23, 2015, Respondent submitted an application for FAP benefits. Boilerplate application language stated that trading or selling FAP benefits could result in disqualification. (Exhibit A, pp. 32-56)

2. On May 12, 2017, a Facebook post stating, “Anybody no who need some yamps im own on da 19<sup>th</sup> I need da cash for my son party”. Response to the post included, “When they come on inbox me” and “... I do”. The poster of the original post responded to a post of “lol yamps” by stating, “Hel yeah yamps lol who want em”. The poster of the original post responded to a post of “How much cuzzo” by stating, “... 50 4 100 cuz”. The Facebook post came from an account nickname which matched Respondent’s name. A photo of an individual also accompanied the post. (Exhibit A, p. 12)
3. The Facebook account at issue included a profile of a person who lived in ████████ Michigan. (Exhibit A, pp. 13-14)
4. The Facebook account at issue included various selfies (Exhibit A, pp. 17-20) which reasonably resembled Respondent’s Secretary of State photograph. (Exhibit A, p. 21)
5. On May 24, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on attempted trafficking and/or trafficking of \$100 in FAP benefits.
6. Respondent has no prior history of IPV. (Exhibit A, pp. 58-59)

### **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 requested a hearing, in part, to establish that Respondent committed an IPV. MDHHS may request a hearing to establish an intentional program violation. BAM 600 (January 2018), p. 5.

MDHHS’ Hearing Summary and testimony alleged that Respondent committed an IPV by selling or attempting to sell FAP benefits on social media. The allegations were consistent with an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS’ prehearing procedures.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16 (c).

For FAP benefits only, an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. Trafficking is established by one of various scenarios including the following:

- 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,
- 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 (January 2018), p. 2.

An IPV is suspected when there is **clear and convincing** [emphasis added] 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 appearing to sell “yamps”. An OIG agent testified that, in her experience, persons attempting to sell FAP benefits will disguise their intent by posting a sale for “yamps”. Given the context of the post, the poster indeed appeared to be selling FAP benefits. The post appearing to sell “yamps” notably referenced a need for cash; this is consistent with an attempted sale.

Social media posts are not always intended to be taken literally. Sometimes the comments following posts can be helpful in identifying the intent of a post; the comments following the post were consistent with finding that the original poster intended to sell FAP benefits. The Facebook post at issue was one that it is difficult to imagine a figurative or joking context. The evidence sufficiently established that the poster intended to traffic 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 any evidence alleging

any such hijacking or borrowing. Presented evidence was also not indicative that any such hijacking or borrowing occurred.

MDHHS presented a document (Exhibit A, p. 13) containing various pieces of information associated with Respondent and the Facebook account at issue. A Facebook account name associated with the Facebook post was listed; the account name matched Respondent's name. Various photographs from the Facebook account were presented; the photographs were reasonably consistent with Respondent's Secretary of State photograph. The resident city of the Facebook account matched Respondent's city of residence. The evidence sufficiently established that Respondent was the Facebook account who posted a sale of FAP benefits. The evidence further established that Respondent's post was an attempt to traffic FAP benefits.

The Facebook post attempting to traffic benefits included an offer of \$100 in FAP benefits in exchange for \$50. Evidence of a completed transaction was not presented. The evidence was sufficient to establish that Respondent attempted to sell \$100 in FAP benefits. Thus, it is found that Respondent committed an IPV by attempting to traffic \$100 in FAP benefits.

The standard disqualification period is used in all instances except when a court orders a different period. 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. BAM 725 (January 2016), p. 16.

MDHHS did not allege Respondent previously committed an IPV. Thus, a one-year disqualification period is justified. The analysis will proceed to determine if a basis for recoupment was established.

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's is the value of the trafficked benefits (attempted or actually trafficked) as determined by:

- 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.

It was found above that Respondent attempted to traffic \$100 in FAP benefits. The finding justifies a basis of recoupment of \$100 for the amount of benefits attempted to be trafficked.

**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 \$100 in FAP benefits. The MDHHS requests to establish a one-year disqualification and a basis for recoupment of \$100 against Respondent are **APPROVED**.

CG/

  
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**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**

LaClair Winbush  
MDHHS-Wayne-31-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
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