



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 19, 2018
MAHS Docket No.: 18-005889
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on September 18, 2018, from Lansing, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████ ██████████, did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4). During the hearing, 79 pages of documents were offered and admitted into evidence as Exhibit A, pages 1-79.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Benefits (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?

FINDINGS OF FACT

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

1. On ██████████, 2017, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 11-31.

2. On the application, Respondent acknowledged that she received, reviewed, and agreed with the pamphlet entitled Important Things to Know. Exhibit A, pp. 30-31.
3. The Important Things to Know pamphlet informed Respondent that it is fraudulent to sell FAP benefits or use someone else's FAP benefits and that the penalty for doing so or attempting to do so is disqualification from the program and a requirement to pay back any amount sold or attempted to be sold. Exhibit A, pp. 61-62.
4. Thus, Respondent was aware of the responsibility to not traffic FAP benefits.
5. Respondent did not have an apparent mental impairment that would limit her understanding or ability to fulfill this requirement. Exhibit A, p. 19.
6. On August 9, 2017, at 5:57 pm, Facebook user "[REDACTED]" posted, "Orange visa on deck." Exhibit A, p. 36.
7. The post received a number of responses from different Facebook users. User "[REDACTED]" posted "How much" at 5:58 pm. To that query, "[REDACTED]" responded "200 for 120" at 5:59 pm. At 10:58 pm, Facebook user "[REDACTED]" posted "still got it." "[REDACTED]" responded by saying "yes" at 12:03 am on August 10, 2017. At 10:43 am, Facebook user "[REDACTED]" posted "Let me get that if it's still available." "[REDACTED]" responded by posting "It is [REDACTED]" and then directed the person to "call me [REDACTED]." Exhibit A, pp. 36-37.
8. On August 10, 2017, at 8:17 pm, Respondent's EBT card was used at a Costco store in Roseville, Michigan to make a \$202.82 purchase. Exhibit A, p. 50.
9. The Facebook screenshots from the "[REDACTED]" Facebook page provided by the Department show that the account belongs to a [REDACTED] female with a birthday in [REDACTED]. Exhibit A, pp. 37-48.
10. Respondent is a [REDACTED] female by the name of [REDACTED] who has a [REDACTED] birthday. Exhibit A, pp. 12-31, 54.
11. The Facebook photos of "[REDACTED]" appear to be the same person as depicted in the Michigan State Police SOS Profile of Respondent. Exhibit A, pp. 38, 52-54.
12. Respondent is Facebook user "[REDACTED]."
13. The Department's OIG filed a hearing request on June 7, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

14. The Department alleges an OI in FAP benefits in the amount of \$200.00 based on Respondent's attempt to traffic \$200.00 in FAP benefits.
15. This was Respondent's second alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for 24 months. Exhibit A, pp. 1-5, 34.
16. A Notice of Hearing was mailed to Respondent at the last known address and was not 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), 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.

The Department alleges that Respondent's Facebook post and EBT usage history show by clear and convincing evidence that Respondent trafficked her FAP benefits, which constitutes an IPV.

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 (January 2016), p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. Trafficking includes not only the improper purchase or sale of FAP benefits, but also the attempt to purchase or sell FAP benefits for consideration other than eligible food. BAM 700 (October 2016), p 2. 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). 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).

An IPV requires that the Department establish by clear and convincing evidence. BAM 720, p. 1; see also 7 CFR 273.16(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.

In this case, the evidence on the record established that Respondent was Facebook user "[REDACTED]" and that Respondent used that Facebook account to traffic FAP benefits. Respondent's posts display a clear and unambiguous intent to trade \$200 worth of FAP benefits in exchange for \$120 in cash or other consideration. Furthermore, just one day after posting offering the \$200 in FAP benefits for sale, Respondent's EBT card was used to make a purchase of \$202.82 at Costco. Based on the evidence presented, it is clear that Respondent successfully trafficked at least \$200 in FAP benefits on August 9 and August 10, 2017.

Respondent was clearly informed that both attempting to sell and in fact selling FAP benefits are unlawful trafficking of FAP benefits and amount to an IPV. Clearly, Respondent was attempting to defraud, and in fact did defraud, the FAP by selling FAP benefits at a substantial discount through her Facebook account. Thus, the Department has established by clear and convincing evidence that Respondent committed an IPV by trafficking FAP benefits.

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 10 years for an 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, there is evidence that Respondent was found to have committed one previous IPV related to FAP benefits. Thus, this is Respondent's second IPV related to FAP benefits. Therefore, Respondent is subject to a two-year disqualification.

Overissuance

For FAP benefits, the measure of an overissuance is the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700, pp 1-2. The undersigned Administrative Law Judge finds that Respondent trafficked FAP benefits by attempting to sell \$200.00 worth of benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2). Thus, the Department is entitled to recoup \$200.00 from Respondent.

DECISION AND ORDER

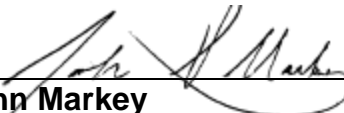
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of FAP benefits in the amount of \$200.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$200.00 in accordance with Department policy, less any amounts already recouped/collected.

It is FURTHER ORDERED that Respondent be disqualified from FAP benefits for a period of 24 months.

JM/dh



John Markey
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

Demitra Owens
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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