



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: August 13, 2018
MAHS Docket No.: 18-006552
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 9, 2018, from Detroit, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG).

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).

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 benefits for FAP?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on June 20, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department after she applied for benefits on April 9, 2015.
4. Respondent **was** not aware of the responsibility to not traffic FAP benefits by posting FAP for sale online as it was not shown that Respondent was a FAP recipient at the time of the specific alleged trafficking.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2011, through April 30, 2018, (fraud period).
7. During the fraud period, Respondent alleges that Petitioner trafficked \$ [REDACTED] of FAP benefits online. The Department alleges that Respondent was entitled to \$0 in such benefits during this time period due to trafficking of the benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service 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, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (January 2017), pp. 12-13.

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 700 (October 2017), pp. 6-7; 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 includes 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; see also Department of Human Services, Bridges Policy Glossary (BPG) (October 2017), p. 68. The Department's definition is consistent with that in federal law, 7 CFR § 271.2.

In this case, the Department alleges that Respondent trafficked FAP benefits on Facebook using her actual name, [REDACTED] (Exhibit A, p. 13.) The Department provided two posts made by Respondent that it relied upon to establish trafficking based upon Facebook posts made by Respondent, the first on March 22, 2014, when she posted on her Facebook wall "Anybody need some stamps hmu:"; and when a post asked how much, the Respondent replied "200". (Exhibit A, p. 19.) In the second post, [REDACTED] posted on July 21, 2014, "anybody need some Stamps"; and in response to a post about how many, the Respondent responded "200". (Exhibit A, p. 18.) Both before and after these two posts referencing dollar amounts, the evidence presented showed the Respondent made posts asking if "anybody need them stamps"; "still got these stamps Hmu".

In addition, the Department presented further evidence based upon Respondent's Facebook page and gleaned the following, that [REDACTED] lived in [REDACTED] and has a son named [REDACTED] whose birthday is [REDACTED], and a son named [REDACTED] whose birthday in [REDACTED]. (Exhibit A, pp. 24 and 25.) In addition, the Secretary of State photo of [REDACTED] and the Facebook photos appeared to be the same person. (Exhibit A, pp. 26-28.)

Based upon the information discovered through Facebook the Department searched its Bridges system and found that [REDACTED] was in their system and had two sons with the same names and birthdates as stated on Facebook. (Exhibit A, p. 30.)

The Department in its Investigation Report disclosed during the hearing that Respondent was not a FAP recipient on her own case until she applied for Food Assistance in an application dated April 9, 2015. (Exhibit A, pp. 32.) Thus, the FAP benefits being offered for sale by Respondent in 2014 could not have been a sale of her own FAP benefits. The evidence alleged that Respondent was on another's case but did not establish who the person was whose case she was on and did not prove by clear and convincing evidence that she knew that trafficking of FAP benefits on

Facebook was illegal as there was no evidence that she would be aware of such requirements until she applied and received benefits, and thus, would have been given the pamphlets about proper use of FAP benefits and use of the EBT card.

The Respondent, however, is now on notice that trafficking on Facebook of FAP benefits will result in loss of FAP benefits and disqualification from receiving FAP benefits and is a violation of both federal SNAP regulations and Department policy.

As such, the Department has not established that Respondent trafficked benefits or even had benefits to traffic and did not demonstrate whose benefits the Respondent would have been allegedly selling in the two posts made in 2014, referenced above, and relied upon by the Department to establish trafficking. In addition, the Department did not establish by clear and convincing evidence that Respondent knowingly committed fraud as she was not a recipient at the time of the alleged trafficking. Thus, a trafficking IPV is not established by clear and convincing evidence.

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 FAP, 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.

As discussed above, the Department has not established by clear and convincing evidence that Respondent committed an IPV. The Department is not entitled to a finding of disqualification on the basis of the evidence presented as no IPV was established.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1.

In this case, the Department did not establish that the Respondent trafficked FAP benefits, and thus, is not entitled to recoup an overissuance of \$ [REDACTED] as alleged.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) Food Assistance.

The Department is ORDERED to delete the OI and cease any recoupment action.

LMF/



Lynn M. Ferris

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

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Respondent

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

M Shumaker
Policy Recoupment
L M Ferris
MAHS