



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: October 10, 2018
MAHS Docket No.: 18-006964
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 October 1, 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 May 11, 2015, MDHHS documented that Respondent reported to MDHHS that he moved from Kentucky. (Exhibit A, p. 28)

2. On April 16, 2018, the Facebook account of "[REDACTED]" (hereinafter "FB Account Holder") posted a phone number for someone to call him. (Exhibit A, p. 19). As of an unspecified date, the phone number Respondent reported to MDHHS matched the phone number posted by FB Account holder. (Exhibit A, p. 21)
3. On May 15, 2018, FB Account Holder posted if someone could take him to MDHHS so he could "get his stamps back on". (Exhibit A, p. 12)
4. On May 16, 2018, FB Acct Holder posted, "I need to sell my stamps to pay my phone bill again dam dam dam" FB Acct Holder additionally posted, "U want 80 for 40", "Just 100 for 50", and "I am trying to sell 40 right now I already sold the 80 boo" (Exhibit A, p. 13)
5. On May 16, 2018, Respondent applied for FAP benefits. Respondent reported a birthday of September 29. (Exhibit A, pp. 30-35)
6. On May 18, 2018, MDHHS issued \$[REDACTED] in FAP benefits to Respondent (Exhibit A, p. 36). As a FAP recipient, Respondent received a brochure from MDHHS which warned that trafficking FAP benefits could result in disqualification and/or repayment of benefits. (Exhibit A, pp. 45-60)
7. On May 19, 2018, FB Acct Holder posted, "Who needs that orange visa". FB Acct Holder posted "80 for 40 right now" in response to an inquiry, "how much u got" before the responder asked for FB Acct Holder's phone number. (Exhibit A, p. 11)
8. As of May 19, 2018, FB Acct Holder's profile listed residency in [REDACTED] Michigan and a former residency in [REDACTED] Kentucky. (Exhibit A, pp. 16-17)
9. On May 20, 2018, FB Acct Holder posted about birthday months with the statement, "[REDACTED] yes baby we living". (Exhibit A, p. 18)
10. The Facebook account at issue included various photos of a person (Exhibit A, pp. 20-21) which reasonably resembled Respondent's Secretary of State photo. (Exhibit A, p. 22)
11. On June 19, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on attempted trafficking and/or trafficking of \$[REDACTED] in FAP benefits.
12. Respondent has no prior history of IPV's. (Exhibit A, p. 26)

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 which include 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 EBT cards, card numbers and 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** 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 sale of “that orange visa”. An OIG agent testified that, in her experience, an “orange visa” is a reference to an EBT card and its color. An intent to sell FAP benefits was further illustrated by the poster’s comments in responses to the post; for example, several of the original poster’s responses included specific offers consistent with selling FAP benefits for \$0.50 of cash in exchange for \$1.00 in FAP benefits (e.g., “80 for 40 right now”). The original poster also stated a need to sell FAP benefits to pay a phone bill. The evidence was consistent with an intent to sell FAP benefits.

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 “orange vis” 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 photos from FB Acct Holder’s profile and Respondent’s Secretary of State photo; the photos were reasonably similar. FB Acct Holder posted a phone number and birthday which matched Respondent’s phone number and birthday. FB Acct Holder also had a profile name which used a portion of Respondent’s first name. FB Acct Holder and Respondent also happened to live in the same city and both were from Kentucky. The evidence sufficiently established that Respondent was the Facebook account holder who posted a sale of FAP benefits. Thus, it is found that Respondent committed an IPV by selling and/or attempting to sell 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. 16.¹

¹ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

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 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.

The FB posts from Respondent referenced many offers to sell. An OI cannot be found by totaling each offer to sell because it is not known whether each offer involved the same FAP benefits.

MDHHS sought an OI of \$[REDACTED]. The amount sought was based on Respondent's statement, "I am trying to sell [REDACTED] right now I already sold the [REDACTED] boo". Respondent's statement establishes a successful sale of \$[REDACTED] in FAP benefits and an attempted sale of \$[REDACTED] in FAP benefits. Given the evidence, MDHHS established that Respondent sold and/or attempted to sell \$[REDACTED] in FAP benefits.

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 selling and/or attempting to sell \$[REDACTED] in FAP benefits. The MDHHS requests to establish a one-year disqualification and recoupment of \$[REDACTED] 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

Petitioner

MDHHS-OIG-Hearings

DHHS

Richard Latimore
MDHHS-Wayne-57-Hearings

Respondent

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