



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 20, 2018
MAHS Docket No.: 18-007984
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 November 20, 2018, from Lansing, Michigan. The Department was represented by [REDACTED] 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). During the hearing, 46 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-46.

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 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 [REDACTED], 2011, Respondent submitted to the Department an application for FAP benefits. Exhibit A, p. 18.

2. Respondent did not have an apparent mental impairment that would limit her understanding or ability to fulfill her requirements under the program. Exhibit A, p. 17.
3. In both March and April 2012, the Department issued to Respondent FAP benefits of \$367. Exhibit A, p. 19.
4. On March 8, 2012, [REDACTED] posted "Only reason I got a bridge card was to sell that hoe lol." Exhibit A, p. 11.
5. On April 4, 2012, [REDACTED] posted "@ItsNotAboutBeez What happened to you and ya mans tryna get on this bridge card?" Exhibit A, p. 11.
6. On April 4, 2012, [REDACTED] posted "HEAVY bridge card for sell... I know niggas tryna eat good sunday...hit me up!!!" Exhibit A, p. 10.
7. On June 29, 2017, [REDACTED] posted "I'm tryna buy a **bridge card**" and "Seriously though I need a **bridge card** yall. Tell ya auntie she can sell \$200." Exhibit A, p. 10.
8. [REDACTED] has a profile name of [REDACTED]. According to the profile associated with [REDACTED], she is a black woman named [REDACTED] born on February 15 and had a child with a man named [REDACTED]. named [REDACTED] with a birthday of November 11. Furthermore, [REDACTED] claims her father's name is [REDACTED]. Exhibit A, pp. 12-13.
9. Respondent is a black female by the name of [REDACTED]. Her birthday is February 15. Respondent has a child with [REDACTED], who lived with her as of May 2012 and a child named [REDACTED] that was born November 11. Exhibit A, p. 14.
10. Respondent is [REDACTED]
11. The Department's OIG filed a hearing request on July 27, 2018, to establish that Respondent allegedly committed an IPV with respect to her FAP benefits. Exhibit A, pp. 1-3.
12. This was Respondent's first alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for 12 months. Exhibit A, pp. 1-5, 20-21.
13. 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 [REDACTED] posts 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 2011), 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 (January 2011), pp. 1-2. 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 its allegation 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 [REDACTED] user [REDACTED] and that Respondent used that [REDACTED] account to attempt to traffic FAP benefits. Respondent's posts display a clear and unambiguous intent to solicit offers to buy her FAP benefits for other consideration. Based on the evidence presented, it is clear that Respondent, by attempting to sell her FAP benefits, was engaged in activity that violates FAP rules and regulations.

However, there is no evidence in the record that Respondent was clearly informed that attempting to sell FAP benefits is unlawful trafficking of FAP benefits and amounts to an IPV. As clear instructions are an element to the finding of an IPV against a client and there is no evidence here that they were given, the Department did not meet its burden of proof. Thus, the Department failed to establish 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, pp. 12-13. 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. 13. 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. 12.

In this case, there is no IPV. Thus, Respondent is not subject to a disqualification from receiving FAP benefits.

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. During the hearing, the Department conceded that it did not have any allegation of an amount of an overissuance. As a result, the Department failed to meet its burden of proving the existence of an overissuance. Thus, the Department is not entitled to recoup or collect anything from Respondent.

DECISION AND ORDER

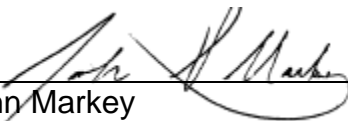
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is not subject to disqualification from receiving FAP benefits.

The Department is ORDERED to delete the alleged overissuance, if any was assessed, resulting from this action.

It is FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits as a result of this action.

JM/nr



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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Wayne 19 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Susan Noel
26355 Michigan Ave.
Inkster, MI
48141

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]