



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: November 16, 2018
MAHS Docket No.: 18-009103
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 24, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving 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. The Department's OIG filed a hearing request on September 11, 2018, alleging that Respondent committed an IPV through the trafficking of FAP benefits.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.

3. In May 2013, Respondent applied for FAP benefits, but the Department denied his application. During the application process, the Department notified Respondent that he could not sell FAP benefits.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding this restriction.
5. Respondent made several posts on his Facebook account offering to sell FAP benefits between July 2014 and July 2017.
6. Respondent was not a recipient of FAP benefits issued by the Department during the period he made the posts offering to sell FAP benefits.
7. Respondent has no prior IPV's.
8. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

The Department alleges that Respondent committed an IPV by trafficking FAP benefits and requests that he be disqualified from FAP eligibility for a 12-month period; the Department does not seek to recoup any alleged trafficked benefits. IPV is defined, in part, as having intentionally "committed any act that constitutes a violation of [FAP], [FAP] regulations, or any State statute for the purpose of . . . trafficking of [FAP] benefits or [electronic benefit transfer] cards." 7 CFR 273.16(c)(2); BAM 720, p. 12. Trafficking includes "[a]ttempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via [EBT] cards, card numbers and personal identification numbers (PINs) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 CFR 271.2. To establish an IPV by trafficking, the Department must present clear and convincing evidence that the household member committed, and intended to commit, an intentional program violation. 7 CFR 273.16(e)(6).

In this case, the Department alleged that Respondent committed an IPV by attempting to sell FAP benefits through social media. In support of its case, the Department presented seven Facebook posts from July 22, 2014; October 31, 2014; November 1, 2014; June 24, 2015; July 28, 2015; May 2, 2017; and June 13, 2017 (Exhibit A, pp. 10-12). The posts were made by "Will Frost" which the Department established, through the photo from the Facebook account, a Secretary of State photo, and a data match of the name, address and birthdate from the Secretary of State with information the Department maintained in its system, that Respondent was the person who made the posts (Exhibit A, pp. 13-15). A review of the posts themselves, some of which begin "couple stamps left," "anybody need stamps hmu," "couple of stamps left hmu," clearly indicate that Respondent was offering FAP benefits for purchase.

The Department presented evidence that in May 2013 Respondent applied for, and was denied, FAP benefits and testified that, as part of the application process, he was advised, among other things, that he was prohibited from selling FAP benefits. Therefore, Respondent was aware that trafficking of FAP benefits was not permitted. Although Respondent was not receiving FAP benefits at the time of the posts at issue, in the June 24, 2015 post, when he was advised that the site was being monitored for FAP trafficking, he acknowledged that he was not worried because they were not his stamps, he was "just the middle man." (Exhibit A, p. 11). Trafficking includes attempted sale of FAP benefits for cash or consideration other than eligible food "either directly, indirectly, in complicity or collusion with others, or acting alone." Therefore, Respondent trafficked by attempting to sell FAP benefits that were not his own.

Under the facts presented, the Department established, by clear and convincing evidence, that Respondent trafficked FAP benefits by attempting to sell FAP benefits. An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(i). The Department established that Respondent did not have any prior IPV violations. Accordingly, he is subject to a twelve-month disqualification from the FAP program for a first IPV case. 7 CFR 273.16(b)(1)(i).

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 the Department has established by clear and convincing evidence that Respondent committed an IPV.

The Department is ORDERED to disqualify Respondent from the FAP program for a period of 12 months.



AE/tm

Alice C. Elkin

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

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc:

[REDACTED]
IPV-Recoupment Mailbox