



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 14, 2019
MAHS Docket No.: 18-009612
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 December 18, 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, 54 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-54.

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. Respondent was an ongoing recipient of FAP benefits.
2. On August 15, 2016, the Department issued to Respondent a Redetermination to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 11-16.

3. On [REDACTED], 2016, Respondent returned to the Department the completed Redetermination. Exhibit A, pp. 11-16.
4. On the submitted Redetermination, Respondent acknowledged that he received, reviewed, and agreed with the pamphlet known as DHS Publication 1010. Exhibit A, p. 16.
5. The DHS Publication 1010 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. 49-50.
6. Thus, Respondent was aware of the responsibility to not traffic FAP benefits and the penalties for doing so.
7. Respondent did not have an apparent mental impairment that would limit his understanding or ability to fulfill this requirement.
8. On March 17, 2017, Facebook user [REDACTED] posted, "I got \$100 of bridgey 4 sale hmu, 1st come basis." Facebook user [REDACTED] responded with "Wya." In response to [REDACTED] post, [REDACTED] stated "Sold already" and followed that up with "Sorry, I put it up and they holla." Exhibit A, p. 36.
9. Facebook user [REDACTED] is a black male. His birthday is [REDACTED], 1975. Facebook user [REDACTED] has a photography company with a listed telephone number of [REDACTED]. In his posted photographs, he has a mostly grey beard. Exhibit A, pp. 37-43; 44-48.
10. Respondent is a black male by the name of [REDACTED]. Respondent was born [REDACTED] 1975. On the Redetermination Respondent returned to the Department on [REDACTED] 2016, Respondent listed his phone number as ([REDACTED]). Respondent's Secretary of State (SOS) Profile photograph shows Respondent with a mostly grey beard. Exhibit A, pp. 16-17; 44.
11. The Facebook photos of Facebook user [REDACTED] appear to be the same person as depicted in the SOS Profile of Respondent. Exhibit A, pp. 44-48.
12. Respondent is Facebook user [REDACTED].
13. The Department's OIG filed a hearing request on September 12, 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-5.

14. The Department alleges an overissuance of FAP benefits in the amount of \$100.86 based on Respondent's attempt to traffic at least \$100.86 in FAP benefits. Exhibit A, pp. 1-5.
15. This was Respondent's first alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-5.
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 posts show by clear and convincing evidence that Respondent engaged in unlawful trafficking benefits by selling or attempting to sell his 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 (January 2016), 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 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 at least \$100 of FAP benefits in exchange for other consideration. Furthermore, based on Respondent's post, this was not an isolated instance. In fact, the posts establish a pattern of fraudulent behavior by Respondent with respect to his FAP benefits. Based on the evidence presented, it is clear that Respondent offered to sell at least \$100 in FAP benefits. Shortly after the offer was made and Respondent acknowledged that he had already sold his FAP benefits, a purchase of \$100.86 was made using Respondent's EBT card. Based on the timing and nearly exact amount to what was confirmed as having been sold, it is found that Respondent trafficked \$100.86 in FAP benefits on March 17, 2017.

Respondent was clearly informed that selling or attempting to sell FAP benefits is unlawful trafficking of FAP benefits and amounts to an IPV. Clearly, Respondent defrauded the Food Assistance Program by selling FAP benefits through his 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 no evidence that Respondent was previously found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-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 (January 2016), pp. 1-2. The undersigned Administrative Law Judge finds that Respondent trafficked FAP benefits by selling \$100.86 worth of benefits illegally in violation of BAM 720 and 7 CFR 273.16(c)(2). Thus, the Department is entitled to recoup and/or collect \$100.86 from Respondent.

DECISION AND ORDER

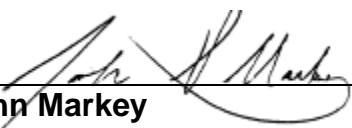
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to the Food Assistance Program.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$100.86 that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall initiate recoupment/collection procedures for the amount of \$100.86 in accordance with Department policy, less any amounts already recouped or collected.

It is FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/hb



John Markey
Administrative Law Judge
for Robert Gordon, Acting 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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI 48502

Genesee County (Union), 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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