GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

[redacted]
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[redacted] MI [redacted]

Date Mailed: March 28, 2019
MAHS Docket No.: 18-011709
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 March 21, 2019 from Lansing, Michigan.

The Department was represented by Craig Baylis, 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).

Department Exhibit A.53 was admitted.

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?

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 November 14, 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 during the alleged fraud period.

4. On [redacted] 2016, Respondent signed a Rights and Responsibilities acknowledgment indicating that he read and was aware of the assistance application Information Booklet information and put on notice that he was aware of his rights and responsibilities, and that he understood that he could be prosecuted for fraud and/or required to repay any amount wrongfully received for all programs applicable, including trafficking. Respondent further acknowledged that he understood that trafficking FAP benefits can result in a disqualification. Exhibit A.26.

5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Petitioner indicates on his application for welfare benefits that he has "some college." Ex. A.46.

6. The Department identified 4 social media trafficking posts. Respondent posted on Facebook on June 13, 2017, and July 13, 2017, that he had "stamps for sale" and "Yamps for sale ya scott," and on July 16, 2017, "Yamps on deck for sale". Exhibit A.10.

7. The Department's OIG indicates that the time period it is considering the fraud period is June 2017 through August 2017, during which time Petitioner engaged in social media offering to traffic food stamps. Exhibit A.

8. The Department is not requesting recoupment as no social media pages state an actual dollar amount for sale or purchase.

9. This was Respondent's first alleged IPV.

10. Respondent is active for the FAP and MA welfare programs. Respondent uses the address of record to collect his welfare program benefits. The same address was used to issue the Notice of Hearing for this IPV complaint, for which Respondent

failed to appear. The hearing notice 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.

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 over-issuances 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, pp 12-13 (January 1, 2016).

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 p 1; BAM 700, p 6.

Specific to social media trafficking, BAM 720 states in part:

FAP
Trafficking

The amount for trafficking-related IPVs 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, p 9.

See also federal regulation addressing trafficking at 7 CFR 273.18(c)(2).

In addition, on October 4, 2011, the USDA SNAP program office issued an FNS Social Media Memorandum stating in part:

> The purpose of this memo is to transmit guidance regarding the sale of, or intent to sell, Supplemental Nutrition Assistance Program (SNAP) benefits and/or Electronic Benefit Transfer (EBT) cards in public or online through Web sites and social media such as Craig's List, Facebook, Twitter, eBay, etc. The Food and Nutrition Service (FNS) has reviewed this matter and considers the offer to sell SNAP benefits to be a violation of SNAP regulations, constituting an intentional Program violation (IPV). The legal basis that 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 is contained in the following regulations and statutory provisions: • 7 CFR 273.16(c)(2) defines IPV to "consist of having intentionally committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device)." See Section 6(b) of the Food and Nutrition Act (the Act) for the statutory basis. • 7 CFR 273.16(e)(6) states that" the hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, Intentional Program Violation as defined in paragraph (c) of this section." • 7 CFR274.7(a) requires that SNAP benefits be used only by household members to purchase eligible food for the household: "Program benefits may be used only by the household, or other persons the household selects, to purchase food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits." See Section 7(b) of the Act for the statutory basis. Section 7(b) of the Act and 7 CFR274.7(a) lay out exactly how SNAP benefits must be used and that using SNAP benefits in any other way (e.g., posting your EBT card for sale online) would violate SNAP regulations and would constitute an IPV under 7 CFR 273.16(c)(2). The verbal offer of sale to another individual or the posting of an EBT card for sale online is evidence that the household member committed an IPV. Exhibit A.51-52.

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 273.16(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.

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; BEM 708. Clients are disqualified for ten years for a 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 18.

In this case, Regulation Agent Baylis presented sworn testimony that constituted clear and convincing evidence showing that Respondent posted on Facebook offers to purchase and/or sell FAP for cash. The FNS, under the purview of the USDA, has ruled that the sale of, or intent to sell or buy FAP benefits through social media, is a violation of the SNAP regulations and constitutes an IPV pursuant to 7 CFR 273.16 and 7 CFR 274.7(a), 7 CFR 274.7(a). On May 19, 2017, Respondent engaged in FAP trafficking as defined under federal and state law, and thus has committed an IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700. Here, while Agent Baylis testified that Respondent posted more than once, no post mentioned a specific dollar amount and thus, the Department is not requesting to recoup, only the disqualification.

Evidence indicates that this Respondent's first IPV. Thus, Respondent is to be sanction for 12 months in accordance with federal and state law.

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 for trafficking.

2. Respondent did not receive an OI of program benefits that the Department is requesting to recoup.

It is ORDERED that Respondent be disqualified from the FAP for a period of 12 months.

Janice Spodarek

JS/dh

Janice Spodarek
Administrative Law Judge
for Robert Gordon, 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

Mark Epps
4809 Clio Road
Flint, MI 48504

Genesee County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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