



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 29, 2019
MOAHR Docket No.: 19-001527
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 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 May 23, 2019, 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 62 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-62.

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) with respect to FAP?
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], 2017, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that he was born

██████████ 1986. Respondent further indicated that he was not disabled. Exhibit A, pp. 24-53.

2. On the application, Respondent acknowledged that he received, reviewed, and agreed with the pamphlet entitled Important Things to Know. Exhibit A, p. 34.
3. The Important Things to Know 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. 41-43.
4. Thus, Respondent was aware of the responsibility to not traffic FAP benefits and the penalties for doing so.
5. Respondent did not have an apparent mental or physical impairment that would limit his understanding or ability to fulfill this requirement. Exhibit A, p. 23.
6. Respondent operates a Facebook page under the username "██████████" That conclusion is based on a number of factors linking Respondent with that account, including the similarity of the names. Most relevantly, ██████████ indicates on Facebook that his birthday was ██████████, 1986, which is Respondent's birthday. In addition, Respondent's photographs of record show the same person as the photographs posted to the Facebook page. Exhibit A, pp. 13-26.
7. On August 6, 2018, Respondent used his Facebook page to make a public post stating "Orange visa on deck for who need." "Orange visa" is a widespread and commonly known term referring to an EBT card issued by the Department. In response to a question about the terms of the offer, Respondent indicated that he had \$200 in FAP benefits to sell. Exhibit A, p. 12.
8. The Department's OIG periodically does keyword searches of public Facebook posts to catch individuals trafficking their FAP benefits. Respondent's posts were identified and triggered an investigation into Respondent's case.
9. The Department's OIG filed a hearing request on January 17, 2019, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-9.
10. The Department alleges an overissuance of FAP benefits in the amount of \$200 based on Respondent's attempt to traffic FAP benefits. Exhibit A, pp. 1-9.
11. 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. 1-9; 55-56.

12. 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 of benefits by selling or attempting to sell 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; 7 CFR 273.16(c).

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1; 7 CFR 271.2. 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; 7 CFR 271.2. An individual who offers to sell his or her benefits by either making an offer in a public way or posting an EBT card for sale online has committed an IPV. 7 CFR 274.7(b). The posting of an 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).

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 engage in unlawful and fraudulent transfers of FAP benefits in exchange for other consideration. Respondent did not appear at the hearing to provide an explanation for the posts. Based on the evidence presented, it is clear that Respondent offered to sell at least \$200 in FAP benefits.

Respondent was clearly informed that selling or attempting to sell FAP benefits is unlawful trafficking of FAP benefits and amounts to an IPV. The evidence clearly established that Respondent was attempting to defraud 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; 7 CFR 273.16(b). 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; 7 CFR 273.16(b). 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; 7 CFR 273.18(c)(2). As discussed above, the Department has shown by clear and convincing evidence that Respondent trafficked FAP benefits by attempting to sell benefits illegally in violation of BAM 720 and 7 CFR 273.16(c)(2). The Department is seeking to establish a \$200 overissuance and has presented sufficient evidence to substantiate that overissuance finding. Thus, the Department is entitled to recoup and/or collect \$200 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 \$200 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 \$200 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/cg



John Markey

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Via Email:

MDHHS-Wayne-15-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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