



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: June 6, 2019
MOAHR Docket No.: 19-001561
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 May 29, 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, 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?
3. Is the Department entitled to repayment from Respondent for the value of trafficked 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. On March 5, 2016, Respondent applied and was approved for FAP benefits. (Exhibit A, pp. 85-110).

2. During the application process, the Department notified Respondent that he could not sell FAP benefits. (Exhibit A, p. 99).
3. Respondent did not have an apparent physical or mental impairment that would limit his understanding of this restriction.
4. On May 23, 2018, Petitioner's living together partner (LTP) applied for FAP and identified Respondent and their minor children ██████ (Child A) and ██████ (Child B) as a member of her household (Exhibit A, pp. 43-83).
5. On August 30, 2018, an individual with Respondent's name posted on Facebook "Orange visa 300 for \$165" (Exhibit A, p. 12).
6. Respondent was a member of his LTP's household until August 31, 2018 and the household was a FAP recipient at the time the offer to sell FAP benefits was posted (Exhibit A, pp. 36-37, 43-83, 129-130).
7. On August 31, 2018, FAP benefits totaling \$293.92 were redeemed from the LTP's EBT card (Exhibit A, p. 129).
8. The Department's OIG filed a hearing request on March 25, 2019, alleging that Respondent committed an IPV through the trafficking of FAP benefits and should be disqualified from receipt of FAP benefits.
9. Respondent has no prior IPV's.
10. A notice of hearing was mailed to Respondent at the last known address and was 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.

Notice of the IPV hearing was sent to Respondent at his last known address and was returned to the Michigan Office of Administrative Hearings and Rules as undeliverable. At the hearing, the Department testified that it had searched CLEAR, a national

database, and concluded that the address to which notice was sent was the best available address for Respondent. Because the matter involved FAP, the hearing proceeded in Respondent's absence. BAM 720, p. 12.

IPV Disqualification

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. 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). 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; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010).

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 the Facebook post made on August 31, 2018 by someone with Respondent's name. The Department established, through the photos from the Facebook account, references in the Facebook account to the poster's children's names and the LTP's name, a mugshot from the Michigan State Police, and information maintained by the Department, that Respondent was the person who made the posts (Exhibit A, pp. 23-41). Respondent did not appear at the hearing to dispute any of the evidence presented by the Department to establish that he made the post.

In a "Sell Everything" site, on August 31, 2018, Respondent posted "orange visa 300 for \$165." The OIG agent testified that, based on her field investigations, "orange visa" was a common colloquialism used to refer to FAP benefits on an electronic benefit transfer (EBT) card to avoid detection from law enforcement. The responses to the post also confirm that the reference in the post was to a bridge card, which is how the EBT card onto which FAP benefits are deposited is referred to in Michigan. Respondent was advised in his March 5, 2016 application that he could not "trade, attempt to trade or sell [his] FAP benefits or Bridge care online or in person." (Exhibit A, p. 99), and the Department testified that Respondent did not have any disability that would prevent him from understanding this prohibition.

Under the facts presented, the Department established, by clear and convincing evidence, that Respondent trafficked FAP benefits by attempting to sell FAP benefits. Thus, he committed an IPV. 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).

Repayment

A party is responsible for a recipient claim, amounts owed to the Department for benefits that are overpaid or benefits that are trafficked. 7 CFR 273.18(a)(ii). The value of claims arising from trafficking-related offenses is the value of the trafficked benefits as determined by (i) the individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination. 7 CFR 273.18(c)(2).

Here, the Department seeks repayment from Respondent for \$300, the amount of the alleged trafficked benefits. The Department presented evidence to show that Respondent was a member of LTP's household, a household that received FAP benefits at the time the post was made on August 30, 2018. There was also evidence presented that FAP purchases totaling \$293.92 were made from the LTP's case on August 31, 2018. However, there was also evidence showing that Respondent was removed from the LTP's case on August 31, 2018 (Exhibit A, p. 37). The copied posts do not show that the sale proposed by Respondent actually transpired. Thus, the documentation presented by the Department was insufficient to establish a valid claim for \$300. Therefore, the Department is not entitled to repayment of \$300 from Respondent for trafficked benefits.

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.
2. Respondent is not responsible for repayment of \$300 for trafficked FAP benefits.

The Department is ORDERED to delete the \$300 recipient claim and cease any recoupment and/or repayment actions.

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



AE/tm

Alice C. Elkin

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

DHHS

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox

[REDACTED]