



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 13, 2018
MAHS Docket No.: 18-000686
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 27, 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 Respondent receive an overissuance (OI) of Food Assistance (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 for Food Assistance (FAP)?

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 January 23, 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.
4. Respondent **was** aware of the responsibility that the attempt to sell or actually sell FAP benefits to other persons is prohibited by federal regulation and Department policy and that FAP recipients are not allowed to traffic their food assistance benefits for cash or other consideration.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2017 through October 31, 2017 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent trafficked or attempted to traffic FAP benefits on social media for case and thus was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] due to trafficking of FAP benefits.
9. This was Respondent's **first** alleged IPV.
10. 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.

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 overissuances 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 (January 2017), p. 12-13.

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 700 (October 2017), p. 8; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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(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.

The Department alleged that Respondent committed a FAP IPV by trafficking when he offered to sell his available FAP benefits via a Facebook post on October 15, 2017. Exhibit A, pp. 12-14. On that date, Respondent posted the following message: "Bridge Card [REDACTED] for [REDACTED]". In a second post on October 16, 2017 he also posted "Bridge Card For Sale". There were responses to both posts and Respondent commented "I got court in the morning I need these bitches gone". Thereafter the Respondent's bridge card was used on October 18, 2017 at [REDACTED] in the amount of [REDACTED] as shown on the [REDACTED] EBT history. In addition the Department found [REDACTED], the Facebook page listing for the sale also noted a birth date reference and name [REDACTED] which was tied through the Department Bridges system and an open FAP case for [REDACTED] with the same birth date. In addition Facebook photos from [REDACTED] were matched to his Secretary of State photos which appear to be the same person [REDACTED]. See Exhibit A, pp. 16-17.

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 2016), p. 1. The definition of trafficking under Department policy includes, in relevant part, "attempting to buy . . . FAP benefits for cash or consideration other than eligible food." BAM 700 (October 2016), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2017), p. 66. This is consistent with the definition in the federal regulations which define trafficking to include "attempting to buy, sell, steal, or otherwise affect an exchange of [FAP] benefits issued and accessed via Electronic Benefit Transfer (EBT) . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 CFR 271.2. The Department must establish an IPV by clear and convincing evidence. BAM 720, p. 1; see also 7 CFR 273(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. It must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010). Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Id.*

The Department argues that a social media post offering to sell FAP benefits alone establishes trafficking and that proof of an actual exchange of benefits for cash or consideration is not required. In support of its position, the Department noted that both Department policy and the federal regulations define trafficking to include "attempting to buy/sell" FAP benefits. The Department also relies on the October 4, 2011 memo from the United States Department of Agriculture (USDA) to States providing guidance on IPV's resulting from the use of websites and social media in selling, or intending to sell,

FAP benefits. The memo specifically provides that an individual's verbal offer of sale to another individual or the online posting of an electronic balance transfer (EBT) card for sale violates federal food assistance program regulations and constitutes an IPV under 7 CFR 273.16(c)(2) (which defines trafficking). (Exhibit A, pp. 21-22.)

In this case, the Department has alleged that actual trafficking occurred with one of the responders to the Facebook post by Respondent. The evidence presented established that Respondent's card was used in the amount of [REDACTED] shortly after the post and the OIG presented evidence that the Respondent did transact a FAP use of [REDACTED].

In addition, the Department presented Respondent's driver's license picture which was determined to be the Respondent based upon date of birth and his full name as shown on his Facebook page.

The evidence presented was sufficient to establish, by clear and convincing evidence that Respondent had clearly engaged in attempting to traffic his FAP benefits and possibly actual trafficking given all the circumstances lining up around the transaction and dollar amount of the post and the EBT card used for the same amount. Thus, the evidence established that Respondent engaged in FAP benefit trafficking and committed an IPV.

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 (October 2016), p. 1. 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. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16. As this is Respondent's first IPV, the Department is entitled to a finding of a one year disqualification of Respondent from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1. The amount for trafficking-related

IPV's is the value of the trafficked benefits (attempted or actually trafficked. BAM 720 (October 2015), p. 8.

In this case, the Department established that the Respondent trafficked and attempted to traffic ██████ of his FAP benefits. Department policy provides: the amount for trafficking-related IPV's 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, (January 1, 2016) p. 8

Based upon the evidence presented it is determined that the Department has established a ██████ OI of FAP benefits for trafficking of FAP during the period October 1, 2017 through October 31, 2017.

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 **did** receive an OI of program benefits in the amount of ██████ from the following program(s) Food Assistance.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of ██████ in accordance with Department policy.

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

LF/cg



Lynn M. Ferris

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

Via Email:

MDHHS- Wayne-55-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]