



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 31, 2018
MAHS Docket No.: 18-003621
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 August 29, 2018, from Lansing, Michigan. The Department was represented by ██████████ 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)(4). During the hearing, 60 pages of documents were offered and admitted into evidence as Exhibit A, pages 1-60.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Benefits (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. On ██████████ 2015, the Department issued to Respondent a Redetermination, Form 1010, that required Respondent to update any information affecting eligibility

for FAP benefits. The Redetermination indicated it was due back by March 3, 2015. Exhibit A, pp. 11-16.

2. On [REDACTED] 2015, Respondent's completed Redetermination form was received by the Department. Exhibit A, p. 16.
3. On the Redetermination, Respondent acknowledged that he was aware of DHS Publication 1010. Exhibit A. p. 16.
4. DHS Publication 1010 provides that it is fraudulent to sell FAP benefits or use someone else's FAP benefits and that the penalty for doing so is disqualification from the program and a requirement to pay back any amount sold. Exhibit A, pp. 42-43.
5. Thus, Respondent was aware of the responsibility to not traffic FAP benefits.
6. Respondent did not have an apparent mental impairment that would limit his understanding or ability to fulfill this requirement.
7. Sometime before April of 2017, Facebook user [REDACTED] posted, "#WHO Trying sale that Bridge card I got \$100 for \$200 ASAP!" Exhibit A, p. 23.
8. The Facebook photos of "[REDACTED]" show that the account belongs to a black male with a birthday of [REDACTED] who attended college at "WC3." Exhibit A, pp. 24-31.
9. Respondent is a black male by the name of [REDACTED] who has a J [REDACTED] birthday, and who attended college at [REDACTED] also known as [REDACTED]. Exhibit A, pp. 12-13, 34.
10. The Facebook photos of [REDACTED] appear to be the same person as depicted in the Michigan State Police SOS Profile of Respondent. Exhibit A, pp. 24-34.
11. Respondent is Facebook user [REDACTED]
12. After being assigned to investigate the matter, [REDACTED] [REDACTED] contacted Respondent by telephone on April 26, 2017. During the phone conversation, Respondent admitted to making the Facebook post and to knowing at the time of the post that doing so was in violation of program rules.
13. The Department's OIG filed a hearing request on April 9, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

14. The Department alleges an OI in FAP benefits in the amount of \$200.00 based on Respondent's attempt to traffic \$200.00 in FAP benefits.
15. This was Respondent's first alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for 12 months.
16. A Notice of Hearing was mailed to Respondent at the last known address and was 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 post amounted to trafficking of FAP benefits, 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, 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, p 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) of the Food Stamp Act. 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 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.

In this case, the evidence on the record established that Respondent was Facebook user "██████████" and that Respondent used that Facebook account to traffic FAP benefits. Respondent's posts display a clear and unambiguous intent to trade \$200 worth of FAP benefits in exchange for \$100 in cash or other consideration. The post is slightly ambiguous as to whether Respondent is trying to buy someone else's benefits or sell his own. Either way, Respondent was clearly informed that both attempting to sell and attempting to buy FAP benefits is unlawful trafficking of FAP benefits and amounts to an IPV. Clearly, Respondent was attempting to defraud the FAP by buying or selling FAP benefits at a substantial discount. He further admitted as much during the phone conversation with ██████████ on April 26, 2017. Thus, I find that 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 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. 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 has ever been 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, pp 1-2. The undersigned Administrative Law Judge finds that Respondent trafficked FAP benefits by

attempting to sell \$200.00 worth of benefits illegally in violation of BAM 700 and 7 CFR 273.16(c)(2). Thus, the Department is entitled to recoup \$200.00 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.
2. Respondent received an OI of FAP benefits in the amount of \$200.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$200.00 in accordance with Department policy, less any amounts already recouped/collected.

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

JM/dh



John Markey
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

DHHS

Denise McCoggle
27260 Plymouth Rd
Redford, MI 48239

Wayne County (District 15), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]