



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 24, 2019
MAHS Docket No.: 18-010756
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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on January 23, 2019, from Detroit, Michigan. The Department was represented by Craig Baylis, 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). During the hearing, 32 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-32.

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 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. Respondent was an ongoing recipient of FAP benefits.

2. Respondent did not have an apparent mental impairment that would limit her understanding or ability to fulfill her requirements under the FAP program. Exhibit A, p. 29.
3. On many occasions during 2017 and 2018, Facebook user [REDACTED] made numerous public Facebook posts both offering to buy and attempting to sell FAP benefits. Exhibit A, pp. 13-14; 17-19.
4. On September 27, 2017 at 5:17 pm, Facebook user [REDACTED] posted, "Who need \$750 in stamps." In a very short period of time, numerous other Facebook users replied expressing interest in taking part in Respondent's illicit scheme to fraudulently transfer FAP benefits. At 5:49 pm, just about a half hour after the initial solicitation, Respondent posted "Anybody need them meet me at [REDACTED]" At 9:09 pm, Respondent posted "They gone." Exhibit A, p. 14.
5. At the [REDACTED] from 6:11 pm through 8:35 pm on September 27, 2017, an EBT card loaded with Michigan issued FAP benefits belonging to [REDACTED] was used to complete ten transactions totaling about \$850. Exhibit A, pp. 15-16.
6. Facebook user [REDACTED] is a black female. Her birthday is [REDACTED]. Facebook user [REDACTED] profile lists telephone number ([REDACTED]) [REDACTED]-[REDACTED]. Exhibit A, pp. 20-22.
7. Respondent is a black female by the name of [REDACTED]. Respondent was born [REDACTED]. The phone number Respondent provided to the Department is [REDACTED]. Exhibit A, pp. 20-22.
8. The Facebook photos of Facebook user [REDACTED] appear to be the same person as depicted in the SOS Profile of Respondent. Exhibit A, pp. 20-22.
9. Respondent is Facebook user [REDACTED].
10. The Department's OIG filed a hearing request on [REDACTED], 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-6.
11. The Department alleges an overissuance of FAP benefits in the amount of \$750 based on Respondent's attempt to traffic at least \$750 in FAP benefits. Exhibit A, pp. 1-6.
12. 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. 1-6.

13. 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 benefits by selling or attempting to sell her 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.

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 (January 2016), pp. 1-2. 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). 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 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 trade at least \$750 of FAP benefits in exchange for other consideration. Furthermore, based on Respondent's posts, this was not an isolated instance. In fact, the posts establish that Respondent encouraged and facilitated others in their attempts at fraudulent trafficking of FAP benefits. Based on the evidence presented, it is clear that Respondent offered to sell at least \$750 in FAP benefits. Shortly after informing her Facebook FAP customers of the offer and telling all takers to meet her at [REDACTED], the same EBT card was used in ten transactions over a short period of time. The tenth transaction took place at 8:35 pm. At 9:09 pm, Respondent posted that they were gone. It is clear that Respondent gained access to [REDACTED] EBT card and sold the balance over a series of transactions on September 27, 2017. Based on the timing and amount to what was confirmed as having been sold, it is found that Respondent trafficked at least \$750 in FAP benefits on September 27, 2017.

Respondent was clearly informed that selling or attempting to sell FAP benefits is unlawful trafficking of FAP benefits and amounts to an IPV. In addition to warnings given at the time of application and redetermination, Respondent was informed by multiple concerned citizens on her Facebook page that what she was doing was wrong. Clearly, Respondent defrauded the Food Assistance Program by selling FAP benefits through her Facebook account, and she knew that what she was doing was wrong when she was doing it. 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. 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. 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. The undersigned Administrative Law Judge finds that Respondent trafficked FAP benefits by selling at least \$750 worth of benefits illegally in violation of BAM 720 and 7 CFR 273.16(c)(2). The Department is only seeking to establish an overissuance of \$750. Thus, the Department is entitled to recoup and/or collect \$750 from Respondent.

DECISION AND ORDER

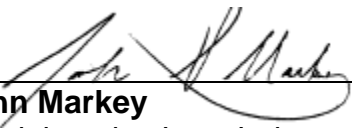
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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 \$750 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 \$750 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 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-Kalamazoo-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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