



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: September 22, 2020
MOAHR Docket No.: 20-001575
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 September 15, 2020, from Lansing, Michigan. The Department was represented by Joseph Adcock, 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 over issuance (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 benefits for 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 February 11, 2020, 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 FAP benefits.
3. As a result of a "Social Media" data mining project, Respondent was identified as attempting to sell Michigan Food Assistance Program (FAP) benefits via her/his personal Facebook.com social media page.
4. The social media search and found Josh Young (a.k.a. [REDACTED]) had posted to Facebook, "Who wanna bridge card its 412 on there ????? Im not going no lower than \$200 idc idc idc #periodt" The corresponding comments show those interested in the post as well as Respondent commenting "Me" when asked, "Who got it?".
5. Respondent was identified as making a post on his personal Facebook.com account on July 17, 2018, seeking to sell his FAP benefits. Respondent posted using Facebook profile [REDACTED]
6. Respondent posted, "Who wanna bridge card its 412 on there ????? im not going no lower than \$200 idc idc idc #periodt" on July 17, 2018, which resulted in three reactions [from unknown persons] along with a response from subject known as Humble Boss, who responded to Respondent's post, with: " Who got it ?". Respondent and the other unknown individual proceeded to chat with one another about said EBT card.
7. There was also a second response from another individual who was identified as BW. There did not appear to be any further correspondence/chat with BW; therefore, no further action was warranted.
8. Respondent identified posting on Facebook as '[REDACTED] [REDACTED]', account ID of '[REDACTED]' and unique ID of [REDACTED]
9. A full review of Respondent's Facebook was attempted for other possible posts of "seeking/offering" FAP benefits. No other posts were located other than listed in this report.
10. Respondent was identified through Facebook account name and identified with a case in Bridges along with comparison via his current MI SOS photograph and MSP Mugshot photo.
11. Respondent's assistance case is currently closed.
12. Respondent does not have any disabilities identified in Bridges.

13. Respondent was a recipient of FAP benefits issued by the Department.
14. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill FAP use requirement.
15. The Department's OIG indicates that the time period it is considering the fraud period is July 17, 2018-July 17, 2018 (fraud period).
16. During the fraud period, Respondent was issued \$412 in FAP benefits by the State of Michigan which he attempted to traffic online.
17. The Department alleges that Respondent received an OI in FA benefits in the amount of \$412 because he attempted to traffic his FAP benefits.
18. This was Respondent's **first** alleged IPV.
19. A notice of hearing was mailed to Respondent at the last known address and **was** returned by the United States Postal Service 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 January 1, 2016, 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 or more, or
- the total amount is less than \$500, 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, pp 12-13 (1/1/2016)(Emphasis added).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016)).

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, 7 USC 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. BEM 203 (Emphasis added). This includes the voluntary transfer of Bridge cards and/or FAP benefits to any person outside the FAP group. DHS-Publication 322. Recipients cannot sell, trade or give away their FAP benefits, PIN or Michigan Bridge card. *Id.* DHHS policy BAM 700-Overissuance: The amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked).

FNS ruled on October 4, 2011, that "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." Section 7(b) of the food stamp act and 7 CFR 274.7(a) clearly states posting your EBT card for sale or conversely soliciting the purchase of an EBT card online is a violation resulting in an IPV. BAM 720. Intentional Program Violations states that "IPV is suspected for a Respondent who is alleged to have trafficked FAP benefits".

MCL 750.300a, BEM 203, 7 U.S.C. 2016 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, 7. U.S.C. 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking. DHHS Policy BAM 700 defines Overissuance "For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked".

Disqualification

A Respondent who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 2. Respondents 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 Respondents 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 (4/1/2016). 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.

This was Respondent's first alleged instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

Clear and convincing proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

The Administrative Law Judge finds that the evidence on the record establishes that Respondent did sell or attempt to sell his FAP benefits by offering them for sale in an online post on his Facebook account in contravention of Department policy, state and federal regulations.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Respondent is responsible for unauthorized Food Assistance Program transactions and engaged in FAP trafficking in contravention of Department policy. The Department has established its case by its care by clear and convincing evidence.

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 solicit for/receive/attempt to traffic FAP benefits in the amount of \$412 which resulted in an OI of \$412 in FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for \$412 in accordance with Department policy.

It is ORDERED that Respondent be disqualified from FAP for a period of 12 months beginning September 15, 2020.

LL/hb



Landis Lain
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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Oakland County (District 3), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]