



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 5, 2021
MOAHR Docket No.: 20-007794
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a hearing was scheduled for April 5, 2021.¹ The hearing was held via telephone conference line on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. MDHHS was represented by Mark Mandreky, regulation agent with the Office of Inspector General. Respondent did not participate in the hearing.

ISSUES

The first issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification.

The second issue is whether MDHHS established a recipient claim related to trafficking or attempted trafficking of Food Assistance Program (FAP) 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 an unspecified date, the Facebook Account using the name, [REDACTED], Respondent's girlfriend (hereinafter, "GF") posted, "Who Can Give Me A

¹ On April 16, 2021, after the hearing, the Michigan Office of Administrative Hearings and Rules received notice that the hearing notice sent to Respondent was undeliverable. Despite Respondent's lack of notice, FAP-related IPV hearings may proceed under federal regulations. 7 CFR 273.16(e)(3)(i).

Ride From GR To White Cloud To Go Get My New Food Card? I'll Hook Ya Up Fat ASF With Some Food!!!...???"

2. As of November 2018, Respondent and GF shared a FAP benefit case and an Electronic Benefit Transfer (EBT) card.
3. On November 8, 2018, the Facebook account of GF (hereinafter, "FBAcctGF") and [REDACTED] (hereinafter, "Uncle") had the following Facebook Message exchange:
 - FBAcctGF: Hey Uncle [REDACTED] ya know anyone interested in buying some food stamps? Kinda Hurting Pretty Damn Bad ATM For Some \$\$ So That's Kinda All I Really Have To Work With. I Just Figured I'd Ask
 - Uncle: No not really...
4. On November 24, 2018, a Facebook Account using the name of [REDACTED] (hereinafter, "FBAcctR") and Uncle had the following Facebook Message exchange:
 - FBAcctR: Uncle [REDACTED] I need some help me ead [sic] my fucking mom ant [sic] understanding I need something to ween off of this shit can u help me I will give u \$150 in food stamps for 60 so I can get something
 - Uncle: ... I can't really leave right now
 - FBAcctR: K
 - Uncle: Who's [sic] food card is it?
 - FBAcctR: Mine and [GF] but I have it
 - Uncle: You probably don't have a ride to my place
5. On November 24, 2018, Uncle's wife made a phone inquiry of the balance of Respondent's/GF's EBT card.
6. On December 20, 2018, Respondent's/GF's EBT card was reported as lost.
7. On January 3, 2019, an anonymous complainant advised MDHHS that Respondent was selling FAP benefits for drug money and that he cancelled the card after selling FAP benefits to Uncle.
8. On [REDACTED] MDHHS requested a hearing to establish a recipient claim of \$150 against Respondent. Additionally, MDHHS sought to impose a one-year IPV disqualification period against Respondent stemming from alleged trafficking of FAP benefits.
9. As of the date of hearing, Respondent had no prior history of IPV disqualification.

CONCLUSIONS OF LAW

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. MDHHS (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-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing, in part, to establish a FAP-related IPV disqualification period against Respondent. Exhibit A, p. 1-2. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (July 2019) p. 5. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent committed an IPV by attempting to sell \$150 in FAP benefits.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or Electronic Transfer (EBT) cards. 7 CFR 273.16(c).

Acts that violate SNAP regulations include FAP benefit trafficking. Trafficking means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; trafficking also means the attempt of such. 7 CFR 271.2.

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). An evidentiary standard of clear and convincing is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black’s Law Dictionary 888 (6th ed. 1990).

MDHHS’s Investigation Report documented that an investigation commenced on January 3, 2019, following an anonymous complaint to a fraud referral hotline. Exhibit A, pp. 4-5. The complaint alleged that Respondent and GF attempted to sell FAP benefits in exchange for drugs.

The complainant forwarded a Facebook Messenger conversation between Respondent and a person MDHHS alleged was his uncle. Exhibit A, pp. 12-13. Documentation of the conversation dated November 24, 2018, began with FBAcctR asking Uncle if he would accept “150\$ in food stamps for 60 so I can get something” to help “ween of this shit”. FBAcctR subsequently stated the Bridge Card belonged to him and GF, but he currently had the card. The exchange ended before any agreement of sale with the uncle stating, “You probably don’t have a ride to my place.”

MDHHS presented a Facebook message exchange involving Uncle dated November 8, 2018; this one was with FBAcctGF. Exhibit A, pp. 12-13. In the exchange, FBAcctGF asked for money for FAP benefits. MDHHS contended that Respondent, not GF, messaged Uncle, even though the message was through GF’s Facebook account. MDHHS contended that Respondent was likely involved in the exchange because Uncle was addressed as an uncle; just as FBAcctR did in the exchange dated November 24, 2018. Given the presumably romantic relationship between Respondent and GF, it is entirely plausible that GF would also address Uncle as an uncle. This evidence was not supportive of trafficking by Respondent.

MDHHS presented a Facebook post under FBAcctGF asking for a ride in exchange for FAP benefits. Exhibit A, p. 12. Again, MDHHS contended that Respondent was the poster even though the post was made on GF’s Facebook account. MDHHS’s contention was based on GF’s statements to an investigating regulation agent dated May 21, 2019, when she denied selling FAP benefits and claimed that Respondent had access to her phone. GF did not testify during the hearing; thus, her statement is hearsay. Further, the statement was made to an investigator who also did not testify during the hearing, rendering GF’s statements to be double hearsay. A hearsay statement is potentially admissible in administrative hearings if sufficiently reliable; that is not the present case. GF’s Facebook account was associated with two postings to sell FAP benefits; Respondent’s account was associated with one. In the context of a trafficking investigation with evidence suggesting trafficking by GF, GF had great motivation to incriminate Respondent by deflecting blame from herself. Given the context, GF’s statement was self-serving and not reliable.

MDHHS testified that the anonymous compliant alleged that Respondent cheated Uncle out of \$150 by reporting his EBT card as stolen before benefits were spent. MDHHS presented a history of GF’s card verifying that GF’s and Respondent’s card was reported as stolen on December 20, 2018. Exhibit A, p. 19. Notably, over one month passed between the conversation involving Uncle and FBAcctR on November 24, 2018, and the reporting of Respondent’s/GF’s lost EBT card. Generally, persons desperate enough to sell FAP benefits do not wait over a month to complete a sale. Respondent’s reported lost card on December 20, 2018, was not particularly corroborative that Respondent trafficked FAP benefits. Further, an anonymous complaint to a fraud referral hotline is not corroboration that Respondent trafficked FAP benefits and/or stiffed Uncle on the sale.

MDHHS learned that an inquiry was made on Respondent's GF's card on November 24, 2018. Exhibit A, p. 20. MDHHS traced the phone number of the inquiry to Uncle's wife. Exhibit A, pp. 23-24. MDHHS contended such evidence was consistent with selling FAP benefits because Uncle and/or his wife would have no reason to inquire on the balance of Respondent's/GF's EBT card. MDHHS's contention assumes that Respondent did not simply use Uncle's wife's phone to obtain an EBT card balance inquiry. Again, the evidence was not particularly corroborative of trafficking FAP benefits.

The only evidence suggesting trafficking by Respondent was his own text conversation with Uncle. Despite a lack of persuasive corroborative evidence, the conversation itself was compelling evidence of an attempt to traffic FAP benefits. The use of a Facebook account tied to Respondent by name strongly suggests that Respondent made the offer to sell FAP benefits. Further, in response to Uncle's question of whose EBT card was it, by stating, "Mine and [GF] but I have it", strongly suggested that Respondent, and not GF, made the offer to sell FAP benefits. The conversation was an obvious attempt to sell benefits which included a specific offer to sell \$150 in FAP benefits for \$60. The conversation additionally included a motive for the sale (to ween Respondent off of substances). It is of no matter that the conversation may not have led to a sale because attempted trafficking of FAP benefits is prohibited by federal regulations and MDHHS policy.

The evidence clearly and convincingly established that Respondent attempted to traffic \$150 in FAP benefits. Thus, MDHHS established that Respondent committed an IPV.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

MDHHS presented documentation that Respondent had no previous IPV's. Exhibit A, pp. 28-29. Thus, a one-year IPV disqualification period is justified for Respondent's first IPV.

MDHHS further sought to establish a recipient claim against Respondent. A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. 7 CFR 273.18(a)(1). Federal regulations mandate state agencies to establish and collect such claims. 7 CFR 273.18(a)(2). Claims arising from trafficking-related offenses will be the value of the trafficked benefits. 7 CFR 273.18(c)(2). MDHHS policy also allows recipient claims for the amount of benefits trafficked or attempted to be trafficked. BAM 700 (October 2018), p. 2 and BAM 720 (October 2017), p. 8.

It was already found that Respondent trafficked or attempted to traffic \$150 in FAP benefits. Thus, MDHHS established a recipient claim of \$150 in FAP benefits against Respondent.

DECISION AND ORDER

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a recipient claim of \$150 against Respondent due to the IPV of attempted trafficking of FAP benefits. The MDHHS requests to establish a one-year FAP-related IPV disqualification and recipient claim of \$150 against Respondent are **APPROVED**.

CG/tm



Christian Gardocki

Administrative Law Judge

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

Via Email:

MDHHS-Newaygo-Hearings
OIG Hearings
LBengel
Policy Recoupment
MOAHR

Respondent – Via First-Class Mail:

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