



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 24, 2024
MOAHR Docket No.: 23-005222
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION
FOR INTENTIONAL PROGRAM VIOLATION (TRAFFICKING)

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] [REDACTED] committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits. Pursuant to MDHHS' request for hearing and MCL 400.9, 7 CFR 273.16 and 7 CFR 273.18, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on April 23, 2024.

Darren Bondy, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving 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. In an Assistance Application submitted to MDHHS on June [REDACTED] 2022 MDHHS notified Respondent and his spouse of the FAP usage responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 11-110; Regulation Agent Testimony)
2. In July 2022, Respondent received FAP benefits as part of a group of two with his spouse. (Exhibit A, pp. 112-115, 117, and 172)
3. In July 2022, the Department was provided information showing that Respondent made a social media post offering to sell FAP benefits on their Electronic Benefit Transfer (EBT) card. Respondent stated "We are offering to purchase you groceries with our EBT for a barter of currency. Message us for details. We can meet at any grocery store in [REDACTED] or [REDACTED] County. Please only serious inquiries. We aren't looking to waste our time or yours! We are not selling our card, we take you shopping." (Exhibit A, pp. 4 and 189)
4. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities. (Exhibit A, pp. 111, 116; Regulation Agent Testimony)
5. Respondent has no prior FAP IPV disqualifications. (Exhibit A, pp. 118-119)
6. On August 25, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally trafficked FAP benefits in July 2022 (fraud period). OIG requested that (i) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV by trafficking. (Exhibit A, pp. 1-191)
7. A notice of hearing was mailed to Respondent at the last known address and was returned by the United States Postal Services as undeliverable.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS 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 funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3015.

Trafficking and IPV Disqualification

MDHHS alleges that Respondent committed an IPV by trafficking FAP benefits and requests that Respondent be disqualified from FAP eligibility. IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP federal] regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of [FAP] benefits or EBT [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2) and (e)(6). Trafficking includes buying, selling, stealing, or otherwise effecting, or attempting to buy, sell, steal or otherwise effect, “an exchange of [FAP] benefits issued and accessed via [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” 7 CFR 271.2.

To establish an IPV by trafficking, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in “a firm belief or conviction as to the truth of the precise facts in issue.” *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. The clear and convincing standard is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).

In this case, MDHHS alleged that Respondent committed an IPV by trafficking FAP benefits by offering to sell FAP benefits on their EBT card.

In an Assistance Application submitted to MDHHS on June █ 2022 MDHHS notified Respondent and his spouse of the FAP usage responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 11-110; Regulation Agent Testimony). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities. (Exhibit A, pp. 111, 116; Regulation Agent Testimony).

In July 2022, Respondent received FAP benefits as part of a group of two with his spouse. (Exhibit A, pp. 112-115, 117, and 172).

In July 2022, the Department was provided information showing that Respondent made a social media post offering to sell FAP benefits on their EBT card. Respondent stated “We are offering to purchase you groceries with our EBT for a barter of currency. Message us for details. We can meet at any grocery store in Macomb or Oakland County. Please only serious inquiries. We aren’t looking to waste our time or yours! We are not selling our card, we take you shopping.” (Exhibit A, pp. 4 and 189). This post clearly shows that Respondent was offering to sell FAP benefits by taking the purchaser shopping to buy groceries for the purchaser’s household with Respondent’s EBT card in exchange for a barter of currency.

Under the facts presented, MDHHS has established by clear and convincing evidence that Respondent trafficked FAP benefits by offering to sell benefits on their EBT card on a social media posting. Thus, Respondent did commit an IPV. An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b). Because Respondent had no prior FAP IPV violations, Respondent is subject to a 12-month disqualification from the FAP program. 7 CFR 273.16(b)(BAM 720, p. 16) and (Exhibit A, pp. 118-119).

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. Because MDHHS has established by clear and convincing evidence that Respondent committed an IPV, Respondent is subject to a FAP disqualification.

IT IS ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

CL/dm



Colleen Lack

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-Electronic Mail :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Dawn Tromontine
Macomb County DHHS Sterling
Heights Dist.
**MDHHS-Macomb-36-
Hearings@michigan.gov**

StebbinsN

Policy-Recoupment

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]