



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR



Date Mailed: May 1, 2024
MOAHR Docket No.: 23-005919
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 held via telephone conference on April 4, 2024. MDHHS was represented by Patrick Waldron, regulation agent with the Office of Inspector General (OIG). Respondent did not participate despite being given at least 15 minutes from the scheduled hearing time to call.

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 April [REDACTED], 2022, Respondent applied for FAP benefits.
2. On October [REDACTED], 2022, through Facebook Messenger (hereinafter, "FM"), Respondent offered to sell \$281 in FAP benefits to Coral Love (hereinafter, "Buyer")

3. On December ■, 2022, through FM, Respondent offered to sell \$95 in FAP benefits to Buyer.
4. On January ■, 2023, through FM, Respondent offered to sell \$100 in FAP benefits to Buyer.
5. On January ■, 2023, through FM, Respondent offered to sell \$75 in FAP benefits to Buyer.
6. On January ■, 2023, through FM, Respondent offered to sell \$200 in FAP benefits to Buyer.
7. On April ■, 2023, through FM, Respondent offered to sell \$280 in FAP benefits to Buyer.
8. On an unspecified date in April 2023, through FM, Respondent offered to sell \$200 in FAP benefits to Buyer.
9. On April ■, 2023, Respondent changed the personal identification number (PIN) on her EBT Card.
10. On an unspecified date, Buyer reported to MDHHS that Respondent was selling FAP benefits.
11. On September ■, 2023, MDHHS requested a hearing to impose a one-year IPV disqualification period against Respondent. MDHHS also requested a hearing to establish a \$1,231 recipient claim against Respondent for FAP benefit trafficking.
12. As of April ■, 2024, the date of the administrative hearing, Respondent had no prior IPV disqualifications.

CONCLUSIONS OF LAW

The 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 administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RTM).

MDHHS requested a hearing, in part, to establish an IPV disqualification period against Respondent. Exhibit A, pp. 1-2. MDHHS may request hearings to establish an IPV. BAM 600 (January 2020) p. 5. An unsigned Intentional Program Violation Repayment Agreement specifically alleged that Respondent committed an IPV by selling or attempting to sell \$■ in FAP benefits. Exhibit A, pp. 104-106.

The types of recipient claims are those caused by agency error, unintentional recipient error, 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 Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.¹ 7 CFR 273.16(c).

Acts that violate SNAP regulations include 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. 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 documented that a fraud investigation began after receiving allegations from Buyer that Respondent sold or attempted to sell FAP benefits. Exhibit A, pp 4-6. Buyer forwarded conversations through FM with Respondent. Exhibit A, pp. 69-76.

On October ■, 2022, Respondent asked Buyer, “Any chance you would do \$100 for my stamps that will; be available on the 11th? There is going to be \$281 loaded.”; Buyer responded, “I can tomorrow”. Exhibit A, pp. 69-70. On December ■, 2022, Respondent asked Buyer, “Do you want the rest of them stamps? \$95 will hit before Christmas”; Buyer answered, “Yea.” Exhibit A, p. 71. On January ■, 2023, Respondent asked, “Would you possibly want to buy a hundred for \$50 and bring me the card I’ll give you \$5 for gas”; Buyer responded she would not have time. Exhibit A, p. 72. On January ■, 2023, Respondent stated, “Would you want 75 in fs”; Buyer answered, “Yeah but I work till late”. Exhibit A, p. 73. On January 30, 2023, Respondent stated, “Any chance you’d want to do \$200 in stamps in advance? I’ll do it for \$70; Buyer responded, “Yea I can after work tomorrow”. Exhibit A, p. 73. On April ■, 2023, Respondent messaged, “Hey cuz just calling to see if you might want... some stamps” and “You could do the whole \$280 for \$120”; Buyer responded that she would have the money on Friday. Exhibit A, p. 75. On an unspecified later date, Respondent messaged Buyer, “You can get 200 for 85 or 75”; Buyer responded, “Alright.”

¹ FAP is the Michigan equivalent of SNAP.

MDHHS explained that “fs” and “stamps” are references to FAP benefits. Accepting the explanation as accurate, Respondent’s messages appear to be consistent offers to sell Buyer a total of \$[REDACTED] in FAP benefits across eight different transactions. There was no evidence suggesting any other purpose for Respondent.

MDHHS tied the messages to Respondent, in part, by the photo next to the posts. The photo next to Respondent’s messages was matched to Respondent’s Facebook page. Exhibit A, p. 66. MDHHS then matched the photograph to Respondent’s Secretary of State photograph through facial recognition software. Exhibit A, pp. 67-68.

The fraud complaint originated with Buyer who told MDHHS that she was motivated after she was unable to use Respondent’s FAP benefits following the final agreement. Buyer’s statement was consistent with documents of Respondent’s EBT Card history verifying that Respondent changed her PIN on April [REDACTED], 2023.

Buyer’s use of Respondent’s FAP benefits was further bolstered by receipts from Sam’s Club. Exhibit A, pp. 90-97. MDHHS obtained documents verifying Buyer’s Sam’s Club membership number. Exhibit A, p. 89. Sam’s Club receipts from November [REDACTED], 2022, 12/[REDACTED] 22, December [REDACTED], 2022, and March 13, 2023, included purchases using Buyer’s store membership paid for with Respondent’s EBT Card. Photographs of Buyer’s transaction on March [REDACTED], 2023, appeared to show that Respondent was not present despite the use of Respondent’s EBT Card.

Generally, FAP recipients should fundamentally be aware that selling FAP benefits is improper. For good measure, MDHHS presented an Information Booklet sent to all FAP recipients stating that selling FAP benefits may result in disqualification and/or repayment.² Exhibit A, pp. 22-65.

The evidence did not establish if Respondent was successful in selling FAP benefits; however, Respondent’s success in trafficking is irrelevant. The Food and Nutrition Services has reviewed the matter and concluded that an offer to sell FAP benefits violates SNAP regulations and is an IPV. USDA-FNS Memorandum, *Supplemental Nutrition Assistance Program- Offering to Sell SNAP Benefits and/or EBT Cards Publicly or Online* dated October [REDACTED], 2011.³

The evidence clearly and convincingly established that Respondent attempted to sell [REDACTED] in FAP benefits for cash or consideration other than eligible food. Thus, Respondent committed an IPV.

Individuals found to have committed a FAP-related 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. Standard IPV penalties are as

² Respondent applied for FAP benefits on April 12, 2022. Exhibit A, pp. 9-14

³ SNAP - Offering to sell SNAP benefits and/or EBT cards publicly or online | Food and Nutrition Service (usda.gov)

follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 720 (October 2017) p. 16.

MDHHS did not allege that Respondent previously committed a FAP-related IPV.⁴ Exhibit A, pp. 84-85. Thus, a one-year FAP-related IPV disqualification period is proper for Respondent's first FAP-related IPV.

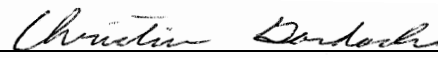
MDHHS further sought to establish a recipient claim of \$1,231 against Respondent. A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. 7 CFR 273.18(a)(1). Federal regulations mandate state agencies to establish and collect such claims. 7 CFR 273.18(a)(2). Claims arising from trafficking-related offenses will be the value of the trafficked benefits. 7 CFR 273.18(c)(2). MDHHS policy 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 attempted to traffic \$[REDACTED] in FAP benefits. Thus, MDHHS established a recipient claim of \$[REDACTED] 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 against Respondent a recipient claim of [REDACTED] based on the IPV of trafficking FAP benefits. The MDHHS requests to establish against Respondent a one-year FAP-related disqualification and recipient claim of [REDACTED] are **APPROVED**.

CG/th



Christian Gardocki
Administrative Law Judge

⁴ Documentation of past FAP-related IPVs against Respondent listed none. Exhibit A, pp. 110-111.

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 :

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