



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: May 23, 2018
MAHS Docket No.: 17-016430
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE**

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 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 scheduled for May 21, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Darren Bondy, regulation agent, with the Office of Inspector General. Respondent did not appear for 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 against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) of 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. Respondent was an ongoing FAP benefit recipient.

2. Respondent's Electronic Benefit Transfer (EBT) purchases from Store included the following dates and amounts:

October 14, 2011	\$ [REDACTED]
March 11, 2012	\$ [REDACTED]
April 11, 2012	\$ [REDACTED]
August 11, 2012	\$ [REDACTED]
September 11, 2012	\$ [REDACTED]
April 12, 2014	\$ [REDACTED]
April 14, 2014	\$ [REDACTED]
June 12, 2014	\$ [REDACTED]
October 12, 2014	\$ [REDACTED]
May 11, 2015	\$ [REDACTED]

(Exhibit A, pp. 45-47)

3. On an unspecified date, Food and Nutrition Services (FNS) informed MDHHS that Respondent's transaction of \$ [REDACTED] from May 11, 2015, at Store was among the suspected trafficking transactions against Store. (Exhibit A, p. 48)
4. On October 26, 2015, the FNS performed an on-site investigation of Store. Investigative conclusions of Store included the following: Store did not provide shopping carts or baskets to their customers, Store did not use optical scanners at checkout, Store was 1200 square feet, and Store had no storage area for food which was outside of public view. Store had more than 20 items of the following items: cheeses, ice cream, juice, potatoes, soups, beef jerky, fish, deli meat/hot dogs, flour, and other types of items. Store had less than 20 items of the following: butter, milk, yogurt/sour cream, bananas, pork products, and breakfast cereals. (Exhibit A, pp. 90-103)
5. On November 9, 2015, FNS sent Store correspondence informing Store that its EBT transactions from April 2015 through September 2015 demonstrated "clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm". Evidence cited by FNS against Store included an unusually high number of transactions ending in a same cents value, multiple transactions from individual EBT accounts within unusually short timeframes, and excessively large EBT transactions. A list of suspected trafficking transactions at Store included transactions which were for \$40.00 and higher. (Exhibit A, pp. 72-86)
6. On December 1, 2015, FNS sent Store correspondence informing Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 87-88)
7. On November 14, 2017, MDHHS requested a hearing to establish that Respondent committed an IPV resulting in a one-year disqualification by trafficking FAP benefits at Store. MDHHS also requested a hearing to establish that Respondent received an overissuance of \$ [REDACTED] in FAP benefits allegedly trafficked from October 2011 through May 2015. (Exhibit A, pp. 1, 6-7)

8. As of the date of hearing, Respondent had no known history of IPV disqualifications. (Exhibit A, pp. 43-44)

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 on November 14, 2017, to establish that Respondent committed an IPV. MDHHS' Hearing Summary and an Intentional Program Violation Repayment Agreement alleged that Respondent trafficked \$ [REDACTED] in FAP benefits from October 2011 through May 2015.

MDHHS may request a hearing to establish an intentional program violation, a disqualification, or a debt. BAM 600 (January 2018), p. 5. An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. MDHHS defines trafficking as the "buying, selling or stealing or otherwise effecting an exchange of FAP 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." BAM 700 (January 2018), p. 2.

MDHHS suspects an IPV "when there is **clear and convincing** [emphasis added] evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility." *Id.*, p. 8 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. 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 alleged Respondent trafficked FAP benefits by exchanging FAP benefits for cash and/or items not authorized to be purchased with an EBT card. The simplified argument against Respondent is as follows:

- Store was administratively established to have engaged in FAP trafficking, in part, based on suspicious EBT transactions.
- Store has a limited supply of food where it is unlikely that someone would make regular and/or large purchases of food.
- Over a period of time, Respondent had suspicious transactions at Store which were consistent with trafficking.
- Therefore, Respondent trafficked FAP benefits.

The evidence established that the federal agency in charge of the FAP program (FNS) investigated Store for trafficking FAP benefits. Presented evidence established that FNS' investigation included photographs of Store, inventorying Store's eligible FAP items, a monthly report of Store's EBT transactions, and EBT transactions suspected to involve trafficking. Presented documents verified that the outcome of the investigation was that Store was permanently disqualified from accepting EBT transactions.

Presented evidence sufficiently verified Store's involvement with FAP benefit trafficking. Based on Respondent's history with Store, MDHHS alleged Respondent engaged in FAP benefit trafficking.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit A, pp. 45-47). MDHHS alleged that \$ [REDACTED] worth of Respondent's transactions from Store involved FAP trafficking.

All of Respondent's alleged trafficking FAP transactions at Store exceeded \$40. Such transactions are consistent with trafficking as FNS' investigation documents of Store indicated that all transactions at Store which were \$40 or higher were suspected to involve trafficking.

Consideration was given to whether Respondent's purchases could reasonably be explained by a non-trafficking reason because each of the alleged trafficking transactions were for amounts not that much higher than the \$40 threshold used by FNS to suspect trafficking. Notably, Respondent's EBT history verified multiple dates when Respondent's EBT card was used more than once at Store. Respondent's EBT purchases at Store on April 14, 2014, totaled \$ [REDACTED] Respondent's purchases at Store on June 12, 2014, totaled \$ [REDACTED] Respondent's purchase at Store on August 11, 2012, totaled \$ [REDACTED] This evidence is suggestive of trafficking as stores engaged in trafficking are known to split larger transactions into smaller transactions in an attempt to disguise trafficking. Looking only at Respondent's individual EBT transactions at Store, a non-trafficking reason is somewhat reasonable given the close proximity of Respondent's transaction amounts to the \$40 threshold set by FNS. Looking at Respondent's total transactions at Store within short timeframes, a non-trafficking explanation is much less plausible.

Consideration was given to whether Respondent's EBT transactions at Store outside of the period of FNS' investigation of Store should be considered trafficking. FNS' investigation of Store considered a period from April 2015 through September 2015. Respondent's transactions alleged to be trafficking were within 48 months of the time period investigated by FNS. The transactions alleged by MDHHS to be trafficking are sufficiently close to the investigation period by FNS that it is very likely that Store was engaged in trafficking FAP benefits during all times that Respondent allegedly trafficked FAP benefits at Store.

MDHHS presented a list of all of Respondent's EBT purchases from the alleged IPV period (Exhibit A, pp. 49-64). Respondent's FAP expenditures demonstrated that

Respondent used FAP benefits at many different stores throughout the alleged IPV period. MDHHS contended that Respondent's purchases at multiple stores, including larger grocery stores, tended to demonstrate that Respondent's large food purchases at Store could not be explained by a lack of alternative options. Respondent's EBT history was consistent with Respondent having adequate shopping alternatives to Store.

Given Store's history of FAP trafficking and limited food inventory, and Respondent's relatively large transactions at Store in short time periods, it is found that Respondent clearly and convincingly trafficked \$ [REDACTED] in FAP benefits at Store. Thus, it is found that Respondent committed an IPV.

The standard [IPV] disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV [, and] lifetime for the third IPV. *Id.*

MDHHS acknowledged that Respondent had no previous IPV disqualifications. Thus, an IPV disqualification period of one year is justified. MDHHS also requested a hearing to establish an OI against Respondent.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *Id.*, pp. 1-2.

In the IPV analysis, it was found that Respondent trafficked \$ [REDACTED] in FAP benefits. Thus, MDHHS established that Respondent is responsible for an OI of \$512.33

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on FAP benefit trafficking from October 2011 through May 2015. It is further found that MDHHS established an OI of \$ [REDACTED] against Respondent. The MDHHS request to establish an overissuance and a one-year disqualification against Respondent is **APPROVED**.

CG/



Christian Gardocki

Administrative Law Judge

for Nick Lyon, 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

DHHS

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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