



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 23, 2018
MAHS Docket No.: 17-016436
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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. On June 12, 2014, Respondent submitted an application for FAP benefits to MDHHS. Boilerplate application language stated that FAP benefits that are trafficked must be repaid. (Exhibit A, pp. 12-30)

2. Respondent subsequently received ongoing FAP benefits. (Exhibit A, pp. 33-37)
3. On the following dates, Respondent's Electronic Benefit Transfer (EBT) purchases from Store included the following amounts:

September 21, 2013	\$ [REDACTED]
October 21, 2013	\$ [REDACTED]
April 22, 2014	\$ [REDACTED]
July 31, 2014	\$ [REDACTED]
September 22, 2014	\$ [REDACTED]
October 22, 2014	\$ [REDACTED]
November 21, 2014	\$ [REDACTED]
December 22, 2014	\$ [REDACTED]
January 22, 2015	\$ [REDACTED]
March 21, 2015	\$ [REDACTED]
April 23, 2015	\$ [REDACTED]

(Exhibit A, pp. 42-43)

4. On an unspecified date, the Food and Nutrition Service (FNS) informed MDHHS that Respondent's transaction dated April 23, 2015, at Store was among the suspected trafficking transactions against Store. (Exhibit A, p. 44)
5. 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 1,200 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. 77-90)
6. 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. 59-73)
7. On December 1, 2015, FNS sent Store correspondence informing Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 74-75)

8. On November 13, 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 September 2013 through April 2015. (Exhibit A, pp. 1, 6-7)
9. As of the date of hearing, Respondent had no known history of IPV disqualifications. (Exhibit A, pp. 40-41)

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 13, 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 September 2013 through April 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 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.

MDHHS presented various documents from FNS' investigation of Store concerning trafficking. FNS' investigation included photographs of Store, an inventory of Store's eligible EBT-eligible items, a monthly report of Store's EBT transactions, and specific EBT transactions at Store which were suspected to involve trafficking. The 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 that Respondent engaged in FAP benefit trafficking.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit A, pp. 42-43). MDHHS alleged that \$557.13 worth of Respondent's transactions from Store involved FAP trafficking.

All of Respondent's alleged trafficking FAP transactions at Store exceeded \$40 or were for even-dollar amounts. Transactions exceeding \$40 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. Transactions for even-dollar amounts are also consistent with trafficking as FNS' investigation documents of Store also stated that Store had unusually large number of EBT transactions ending in a same-cents value, including those for even-dollar amounts.

Consideration was given to whether Respondent's purchases could reasonably be explained by a non-trafficking reason because some of Respondent's alleged trafficking transactions were for amounts not that much higher than the \$40 threshold deemed by FNS to be excessive. Notably, Respondent's EBT history verified multiple dates when Respondent made more than one EBT purchase at Store. For example, Respondent's \$█████ purchase at Store on July 31, 2014, was preceded by a \$█████ transaction one minute later (MDHHS did not allege the second transaction to be trafficking). Respondent's purchase at Store for \$█████ on September 22, 2014, was followed by a \$█████ purchase hours later. Respondent's purchases on December 22, 2015, totaled over \$█████ This evidence is consistent with 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 proximity of the transaction

amounts to the 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 MDHHS established a basis for trafficking for Respondent's EBT transactions at Store which were outside of the period investigated by FNS. The transactions alleged to be trafficking occurred within a reasonably close timeframe to the months considered by FNS that it is still likely that Store was engaged in trafficking FAP benefits during all times that Respondent is suspected of trafficking.

MDHHS presented a list of all of Respondent's EBT purchases from the alleged IPV period (Exhibit A, pp. 45-53). Respondent's FAP expenditures demonstrated that Respondent used FAP benefits at many stores throughout the alleged IPV period. MDHHS contended that Respondent's purchases at multiple stores (including traditional 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 supportive in finding that Respondent's purchases at Store were not due to a lack of shopping alternatives.

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 alleged that Respondent's trafficking of FAP benefits justifies finding an OI of FAP benefits.

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 [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] 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.

It was already found that Respondent trafficked \$ [REDACTED] in FAP benefits. Thus, MDHHS established that Respondent is responsible for an OI of \$ [REDACTED]

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 September 2013 through April 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

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS