



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: June 20, 2018
MAHS Docket No.: 17-015031
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 June 11, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Tonya Jeter, assistant attorney general. Patrick Waldron, regulation agent, and Craig Carlton, supervisor, testified on behalf of MDHHS. Petitioner appeared and was represented by his attorney, Steven Gittleman. Sahnaj Chowdhury participated as a Bengali translator.

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 November 6, 2015, Respondent electronically signed and submitted to MDHHS an application for Food Assistance Program (FAP) benefits. (Exhibit A, pp. 65-81) Respondent's application was subsequently approved.

2. A pamphlet sent to clients who apply for FAP benefits stated to not sell or trade FAP benefits. The pamphlet further warns that breaking FAP rules could result in disqualification and/or repayment of FAP benefits which are improperly traded or sold. (Exhibit A, pp. 107-122)
3. During all relevant times, Respondent did not utilize an authorized representative on his FAP case. (Exhibit A, pp. 55,56, and 63)
4. From November 2015 through January 2017, Respondent made 99 EBT purchases from a store (hereinafter "Store"). MDHHS alleged the following transactions involved trafficking:

[REDACTED]

(Exhibit A, pp. 99-104)

5. On or near October 24, 2016, the Food and Nutrition Service (FNS) performed an on-site investigation of Store. Investigative conclusions included the following: Store had less than 10 shopping carts, Store had less than 10 shopping baskets, Store did not sell hot food; Store did not use optical scanners at checkout; Store was 2,700 square feet; and Store had no storage area for food which was outside of public view. Store's food inventory did not include any of the following: beef, deli meat, hot dogs, chicken, pork, meat jerky, corn, flour, ice cream, butter, yogurt, apples, tomatoes, or greens. (Exhibit A, pp. 40-55)
6. On January 17, 2017, FNS sent Store correspondence informing Store that its EBT transactions from April 2016 through September 2016 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, exhausting EBT accounts in short periods, and excessively large EBT transactions. A list of suspected trafficking transactions at Store included 16 transactions by Respondent (marked above by an asterisk). (Exhibit A, pp. 14-39)
7. On February 7, 2017, following receipt of correspondence from Store, FNS informed Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 12-13)
8. On October 10, 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 November 2015 through January 2017. (Exhibit A, pp. 1)
9. As of the date of hearing, Respondent had no known history of IPV disqualifications. (Exhibit A, pp. 125-126)

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 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 at Store from November 2015 through January 2017.

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 that 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 based on various EBT transactions which were consistent with trafficking.
- 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 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 EBT-eligible items, and specific EBT transactions at Store which FNS suspected to involve trafficking. The documents verified that the outcome of FNS’ 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. 47-48). MDHHS alleged that 34 transactions totaling \$ [REDACTED] between Store and Respondent involved FAP trafficking.

FNS cited transactions at Store ending in same cents value as support for finding that Store was involved in trafficking. From November 2015 through January 2017, Respondent had 99 transactions at Store. Of Respondent’s transactions, 34 ended in

\$.99. The regularity of same-cent-value transaction is consistent with trafficking FAP benefits.

FNS cited transactions at Store which were “excessively large” as support that Store was involved in trafficking. FNS cited 368 transactions at Store (see Exhibit A, pp. 33-39) which exceeded \$86.43. During the alleged OI period, Respondent had 22 transactions at Store which exceeded \$86.43. Respondent additionally had a \$32.76 transaction at Store on June 11, 2016, which followed a transaction for \$165.95. Respondent had the second highest EBT transaction amount (and 3 of the 21 highest transactions) at Store cited by FNS to be consistent with trafficking (see Exhibit A, p. 33). Respondent’s large transactions were consistent with trafficking.

All of Respondent’s alleged trafficking FAP transactions at Store involved one or more of the following: ended in a \$.99 value, exceeded \$90, or exceeded \$200 in combined transactions from the same date. The alleged FAP trafficking transactions were consistent with FAP trafficking at Store.

Respondent testified that he preferred to buy items from Store because it was close to his home, and he could walk to Store. Respondent generally denied that any of his transactions at Store involved FAP trafficking. During the hearing, Respondent was asked how he was able to transport his purchased food without a vehicle (a fair question considering that 12 of Respondent’s purchases from Store exceeded \$200). Respondent testified that Store’s owner would help him carry home food items. Respondent presented no corroboration or verification for his testimony.

MDHHS testimony acknowledged that it cannot be stated with certainty what Respondent received for his EBT benefits at Store. The MDHHS acknowledgement does not render any of Respondent’s alleged trafficking transactions to be significantly less suspicious for trafficking.

It is theoretically possible that Respondent legitimately and regularly spent hundreds of dollars at Store. It is theoretically possible that Store’s owner assisted Respondent with the transportation of food. Given the evidence, such theoretical possibilities are highly improbable.

Based on the evidence, 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. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2016), 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 November 2015 through January 2017. It is further found that MDHHS established an OI of \$ [REDACTED] against Respondent. The MDHHS requests to establish an overissuance and a one-year disqualification against Respondent are **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 (via Email)

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