



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: August 27, 2018
MAHS Docket No.: 18-003256
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 August 15, 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 Maria Walters, 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 a basis for recoupment for Respondent's alleged 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 11, 2014, Respondent applied for FAP benefits. (Exhibit A, pp. 69-88) Respondent subsequently began receiving FAP benefits. (Exhibit A, pp. 89-91)

2. As a FAP recipient, Respondent received a brochure from MDHHS which warned that trafficking FAP benefits could result in disqualification and/or repayment of benefits. (Exhibit A, pp. 94-109)
3. From September 13, 2014, through July 11, 2015, Respondent made 17 purchases from [REDACTED] (aka [REDACTED]), Michigan (hereinafter "Store") totaling \$ [REDACTED] (Exhibit A, p. 54.) Respondent's purchases included the following 13, which were alleged by MDHHS to involve trafficking:

<u>Date</u>	<u>Amount</u>
September 13, 2014	\$ [REDACTED]
October 12, 2014	\$ [REDACTED]
November 11, 2014	\$ [REDACTED]
November 11, 2014	\$ [REDACTED]
December 12, 2014	\$ [REDACTED]
December 14, 2014	\$ [REDACTED]
January 11, 2015	\$ [REDACTED]
March 11, 2015	\$ [REDACTED]
April 22, 2015	\$ [REDACTED]
May 11, 2015	\$ [REDACTED]
June 11, 2015	\$ [REDACTED]
June 11, 2015	\$ [REDACTED]
July 11, 2015	\$ [REDACTED]

(Exhibit A, p. 47)

4. On or near February 1, 2016, FNS performed an on-site investigation of Store. Investigative findings included the following: Store had no shopping carts, Store had no shopping baskets, Store had no optical scanners, Store cashiers operated through a plastic barrier, Store's inventory included dusty cans of food for sale, and Store had no private storage area for food. (Exhibit A, pp. 12-25)
5. On March 17, 2016, FNS sent Store correspondence informing Store that its EBT transactions from September 2015 through February 2016 demonstrated "clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm". Evidence cited by FNS against Store multiple transactions from individual EBT accounts within unusually short timeframes and excessively large EBT transactions. A list of suspected trafficking transactions from Store was attached which included transactions of \$ [REDACTED] and higher. (Exhibit A, pp. 26-43)
6. On April 19, 2016, following an opportunity for Store to respond to the allegations, FNS informed Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 44-46)
7. On March 21, 2018, MDHHS requested a hearing to establish recoupment based on \$ [REDACTED] in allegedly trafficked FAP benefits from September 2014

through July 2015. MDHHS also requested a hearing to establish an IPV disqualification of one year against Respondent. (Exhibit A, pp. 1-2)

8. As of the date of hearing, Respondent had no known previous IPV disqualifications.

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 September 2014 through July 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 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.
- 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, specific EBT transactions at Store which FNS suspected to involve trafficking, and correspondence to Store. The documents verified that Store was permanently disqualified from accepting EBT transactions due to transactions consistent with FAP trafficking. MDHHS alleged that Respondent's transaction history at Store was also consistent with trafficking.

FNS cited "excessively large" transactions at Store as suspicious for trafficking. A list of Store's transactions suspicious for trafficking included transactions \$23.88 and higher. Of the 13 transactions alleged to be trafficking, 12 more than tripled the threshold amount trafficking amount set by FNS. Respondent's "excessively large" transactions at Store were consistent with trafficking FAP benefits.

FNS cited transactions at Store as suspicious for trafficking when performed in unusually short timeframes. On November 11, 2014, Respondent had a \$.25 transaction at Store. A \$.25 EBT transaction, by itself, is so small that it is not indicative of trading FAP benefits. Respondent's \$.25 transaction is indicative of trafficking because it preceded a \$100+ transaction approximately 3 minutes later. Given the evidence, Respondent's transaction for \$.25 was consistent with trafficking FAP benefits.

MDHHS presented Respondent's EBT transaction history from the alleged IPV period (Exhibit A, pp. 48-62). Respondent's history listed dozens of EBT transactions at various stores. Respondent's expenditure history was consistent with Respondent having ample opportunity to purchase food from stores other than Store.

MDHHS presented Respondent's EPPIC history (Exhibit A, pp. 64-66). The history verified that Respondent did not have an authorized food representative. Thus, it can be inferred that all purchases made with Respondent's FAP benefits were performed with Respondent's EBT card. This evidence was consistent that Respondent was the one who performed the transactions alleged to involve trafficking.

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 disqualification period is used in all instances except when a court orders a different period. 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. BAM 725 (January 2016), p. 16.

MDHHS did not allege a previous IPV by Respondent. Thus, a one-year disqualification is proper for Respondent's first IPV.

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 a basis to recoup \$ [REDACTED] in FAP benefits from Respondent.

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 2014 through July 2015. It is further found that MDHHS established a basis to recoup \$ [REDACTED] in FAP benefits from Respondent. The MDHHS requests to establish recoupment 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

Clarence Collins
MDHHS-Wayne-55-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS