



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 15, 2018
MAHS Docket No.: 18-003523
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 6, 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 a basis for recoupment of trafficked 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 August 11, 2014, Respondent applied for FAP benefits. Boilerplate application language stated that FAP benefits which are trafficked must be

repaid and that trafficking benefits may result in a finding of fraud. (Exhibit A, pp. 12-38)

2. Respondent subsequently received ongoing FAP benefits (Exhibit A, pp. 39-51) As a FAP recipient, Respondent received a brochure from MDHHS which warned Respondent that trafficking FAP benefits could result in disqualification and/or repayment of benefits. (Exhibit A, pp. 145-160)

3. From September 16, 2014 through September 26, 2016, Respondent made approximately 127 Electronic Benefit Transfer (EBT) purchases totaling \$[REDACTED] from [REDACTED] [REDACTED] [REDACTED] (hereinafter "Store"). Respondent's purchases included the following 50 which MDHHS alleged to involve trafficking:

| | | |
|--------------------|---------------|------|
| October 23, 2014 | \$ [REDACTED] | |
| October 23, 2014 | \$ [REDACTED] | |
| November 21, 2014 | \$ [REDACTED] | |
| November 21, 2014 | \$ [REDACTED] | |
| November 23, 2014 | \$ [REDACTED] | |
| January 21, 2015 | \$ [REDACTED] | 1708 |
| January 21, 2015 | \$ [REDACTED] | 1711 |
| February 23, 2015 | \$ [REDACTED] | |
| August 21, 2015 | \$ [REDACTED] | |
| August 21, 2015 | \$ [REDACTED] | |
| September 21, 2015 | \$ [REDACTED] | |
| September 21, 2015 | \$ [REDACTED] | |
| September 22, 2015 | \$ [REDACTED] | |
| September 23, 2015 | \$ [REDACTED] | |
| October 21, 2015 | \$ [REDACTED] | |
| October 22, 2015 | \$ [REDACTED] | |
| October 22, 2015 | \$ [REDACTED] | |
| November 21, 2015 | \$ [REDACTED] | |
| November 22, 2015 | \$ [REDACTED] | |
| November 27, 2015 | \$ [REDACTED] | |
| December 21, 2015 | \$ [REDACTED] | |
| January 21, 2016 | \$ [REDACTED] | |
| January 21, 2016 | \$ [REDACTED] | |
| January 21, 2016 | \$ [REDACTED] | |
| February 21, 2016 | \$ [REDACTED] | |
| March 21, 2016 | \$ [REDACTED] | |
| March 21, 2016 | \$ [REDACTED] | |
| March 22, 2016 | \$ [REDACTED] | |
| March 22, 2016 | \$ [REDACTED] | |
| March 30, 2016 | \$ [REDACTED] | |
| May 21, 2016 | \$ [REDACTED] | |
| May 21, 2016 | \$ [REDACTED] | |

| | | |
|-----------------|---------------|------------------------|
| May 23, 2016 | \$ [REDACTED] | 1047 |
| May 23, 2016 | \$ [REDACTED] | 1048 |
| May 24, 2016 | \$ [REDACTED] | |
| June 22, 2016 | \$ [REDACTED] | 1028 |
| June 22, 2016 | \$ [REDACTED] | 1029 |
| June 22, 2016 | \$ [REDACTED] | 1855 |
| June 23, 2016 | \$ [REDACTED] | |
| June 24, 2016 | \$ [REDACTED] | |
| June 25, 2016 | \$ [REDACTED] | |
| June 26, 2016 | \$ [REDACTED] | |
| July 21, 2016 | \$ [REDACTED] | |
| July 21, 2016 | \$ [REDACTED] | |
| July 22, 2016 | \$ [REDACTED] | |
| July 24, 2016 | \$ [REDACTED] | |
| August 21, 2016 | \$ [REDACTED] | |
| August 28, 2016 | \$ [REDACTED] | |
| August 29, 2016 | \$ [REDACTED] | |
| August 30, 2016 | \$ [REDACTED] | (Exhibit A, pp. 55-60) |

Transactions marked with an asterisk were included in the trafficking allegations against Store by the Food and Nutrition Service (FNS). Exhibit A, p. 61. All purchases alleged to be trafficking were made with Respondent's EBT card and not with the card of an authorized representative. (Exhibit A, pp. 106-113)

4. On or near April 2, 2016, FNS performed an on-site investigation of Store. Investigative findings included the following: Store did not use optical scanners; Store had no private storage area for food; and Store had less than 10 shopping carts and baskets available for customers. (Exhibit A, pp. 128-142)
5. On September 7, 2016, FNS sent Store correspondence informing Store that its EBT transactions from February through July 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 unusual 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 from Store included transactions of \$24.00 and higher. (Exhibit A, pp. 114-125)
6. On November 7, 2016, following receipt of Store's response to trafficking allegations, FNS informed Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 126-127)
7. On April 2, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from June 2013 through October 2014 through August 2016 and to establish an IPV disqualification of 1 year against Respondent. (Exhibit A, pp. 1-2)

8. As of the date of hearing, Respondent had no previous IPV disqualifications. (Exhibit A, pp. 53-54)

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 June 2013 through October 2014.

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 \$24.00 and higher. Respondent had approximately 22 such transactions at Store during the alleged OI period. Respondent's "excessively large" transactions at Store were consistent with trafficking FAP benefits.

FNS also cited an unusually high number of transactions at Store ending in same-cents values as suspicious of trafficking. Approximately 21 of Respondent's alleged trafficking transactions at Store were for even-dollar amounts; approximately 3 additional transactions not alleged to involve trafficking were for even-dollar amounts. Respondent's unusually high percentage of even-dollar amount transactions at Store were consistent with trafficking FAP benefits.

FNS also cited transactions within unusually short timeframes as evidence of Store's trafficking. Respondent had multiple EBT transactions separated by 1-3 minutes. For example, on May 23, 2016, Respondent spent \$[REDACTED] total over 2 transactions approximately 1 minute apart. On June 22, 2016, Respondent spent \$[REDACTED] over 2 transactions approximately 1 minute apart. The pattern of multiple transactions within unusually short timeframes was further support that Respondent trafficked FAP benefits at Store.

MDHHS presented Respondent's full EBT transaction history from the alleged IPV period (Exhibit A, pp. 62-105). 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.

Not all alleged trafficking transactions fit into the suspicious trafficking transactions outlined by FNS. For example, Respondent's transactions of \$[REDACTED] on November 21, 2015, November 22, 2015, August 29, 2015, and August 30, 2015, were not for even dollar amounts nor were they "excessively large". Transactions on separate days is not deemed to be within an unusually short timeframe. Though having transactions for identical amounts on separate days may be unusual, FNS did not cite the pattern of such transactions in their investigation of Store. Given the evidence, it is found that Respondent did not traffic \$[REDACTED] (\$[REDACTED] x 4) of the alleged amount by MDHHS.

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. 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 1-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 has 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 failed to establish that Respondent trafficked \$[REDACTED] in FAP benefits. The MDHHS request to establish an overissuance of \$[REDACTED] in FAP benefits is **DENIED**.

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 June 2013 through October 2014. It is further found that MDHHS established a basis to recoup \$[REDACTED] in FAP benefits from Respondent. The MDHHS requests to establish recoupment of \$[REDACTED] and a 1-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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

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