



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: November 29, 2018
MAHS Docket No.: 18-003730
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM

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 held on November 26, 2018, from Detroit, Michigan. H. David Beaton, assistant attorney general, appeared as an attorney for the Michigan Department of Health and Human Services (MDHHS). Patrick Waldron, regulation agent with the Office of Inspector General, testified on behalf of MDHHS. Respondent appeared and was represented by her attorney, Steven Gittleman.

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.

The second issue is whether MDHHS established a recipient claim due to 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 January 16, 2016, Respondent applied for FAP benefits. (Exhibit A, pp. 63-83). Respondent subsequently began receiving FAP benefits (see Exhibit A, pp. 59-60).

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 103-121.)
3. From March 16, 2016, through September 30, 2016, Respondent made approximately 30 purchases from [REDACTED] of Detroit, Michigan, (hereinafter "Store") totaling \$ [REDACTED]. Respondent's purchases included the following 14, which were alleged by MDHHS to involve trafficking:

Date	Amount	Time (if relevant)
March 16, 2016	\$ [REDACTED]	
May 26, 2016	\$ [REDACTED]	
July 13, 2016	\$ [REDACTED]	
July 16, 2016	\$ [REDACTED]	18:25
July 16, 2016	\$ [REDACTED]	18:32
July 18, 2016	\$ [REDACTED]	
July 22, 2016	\$ [REDACTED]	
August 18, 2016	\$ [REDACTED]	
August 26, 2016	\$ [REDACTED]	
August 27, 2016	\$ [REDACTED]	
August 30, 2016	\$ [REDACTED]	
September 1, 2016	\$ [REDACTED]	
September 20, 2016	\$ [REDACTED]	
September 30, 2016	\$ [REDACTED]	(Exhibit A, pp. 99-100.)

Amounts marked with an asterisk were specifically among transactions flagged by the Food and Nutrition Service (FNS) as trafficking transactions by Store.

4. On or near October 24, 2016, FNS performed an on-site investigation of Store. Investigative findings included the following: Store was approximately 2,700 square feet; Store had less than 10 shopping carts; Store did not use optical scanners; and Store had no private food storage area. Store's inventory did not include any of the following: cheese, butter, apples, tomatoes, lunch meats, beef, lamb, pork, or flour. Store had at least 20 items of the following: milk/cream, cereals, pasta, snacks, finned fish, shelled fish, peppers, and various vegetables. (Exhibit A, pp. 38-54.)
5. On January 17, 2017, FNS sent Store correspondence informing Store that its electronic benefit transfer (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 unusual number of transactions in same cent values, transactions from individual EBT accounts within unusually short timeframes, an exhaustion of EBT benefits within unusually short timeframes, and "excessively large" transactions. (Exhibit A, pp. 13-15.) A list of suspected trafficking transactions from Store was attached which included 412 transactions ending in \$.99 values from \$9.99 and higher. (Exhibit A, pp. 16-

23.) A list of EBT transactions of \$86.43 and larger was also attached. (Exhibit A, pp. 32-38.) A list of transactions in close proximity and for at least \$100 was also attached. (Exhibit A, pp. 24-27.)

6. On February 7, 2017, 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. 11-12.)
7. On April 17, 2018, MDHHS requested a hearing to establish a recipient claim against Respondent for \$[REDACTED] in allegedly trafficked FAP benefits from March 2016 through September 2016. MDHHS also requested a hearing to establish an IPV disqualification of one year against Respondent. (Exhibit A, p. 1.)
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 unsigned Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) alleged that Respondent trafficked \$[REDACTED] in FAP benefits at Store from March 2016 through September 2016.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

Acts that violate SNAP regulations include trafficking. Trafficking means the buying, selling, stealing, or otherwise effecting an exchange of SNAP 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. 7 CFR 271.2.

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. 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 from FNS. 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 \$86.43 and higher. Of Respondent's 14 transactions at Store alleged to be trafficking, 7 exceeded the threshold amount of trafficking set by FNS. Respondent's "excessively large" transactions at Store were consistent with trafficking FAP benefits.

Stores engaged in exchanging food benefits for cash will often disguise their transactions by making-up transaction amounts. Stores that poorly disguise their trafficking transactions will often repeat the cents values of their transactions. The result is that such stores will have an unusual high number of transactions ending in the same cents values. FNS cited 412 transactions at Store ending in \$.99 value as evidence of Store's trafficking. Of Respondent's 30 transactions at Store, 7 ended in \$.99 values. Respondent's attorney contended that Respondent's high number of \$.99 transactions could have been influenced by Store's price structure or Respondent's purchase habits. Evidence of a price structure likely to result in transactions ending in \$.99 was not presented. Evidence of Respondent's purchasing habits likely to result in transactions ending in \$.99 was not presented. Further, it is notable that of Respondent's transactions ending in \$.99, none were for the same amount. Thus, it is not known how

Store's price structure or Respondent's food choices contributed to a high number of legitimate EBT purchases ending in \$.99. Respondent's transactions at Store for same-cents values were consistent with trafficking FAP benefits.

Stores engaged in trafficking FAP benefits will often disguise their transactions by breaking up large transactions into smaller amounts. Stores that poorly disguise their transactions will process the divided transactions in short timeframes. FNS found such transactions occurring at Store. On July 16, 2016, Respondent had transactions of \$[REDACTED] followed by \$[REDACTED] approximately 7 minutes later. The \$[REDACTED] transaction was cited by FNS as a trafficking transaction against Store. Respondent's close transactions from July 16, 2016, were consistent with trafficking.

Respondent testified she only bought legitimate food items from Store. Respondent testified that she purchased food from Store because it was near her home. Respondent presented little evidence to support her claim that all purchases from Store did not involve trafficking. For example, receipts listing legitimate food purchases would be evidence to rebut the allegations of trafficking; Respondent testified that Store provided no such receipts. In fairness to Respondent, it is unlikely that any person would keep food receipts for several months.

MDHHS presented Respondent's EBT transaction history from the alleged IPV period (Exhibit A, pp. 84-98). 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.

Based on Respondent's EBT transactions at Store consistent with trafficking, it is found that Respondent clearly and convincingly trafficked \$[REDACTED] in FAP benefits at Store. Thus, it is found that Respondent committed an IPV.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and 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.


MDHHS further sought to establish a recipient claim against Respondent. A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. 7 CFR 273.18(a)(1). Federal regulations mandate state agencies to establish and collect such claims. 7 CFR 273.18(a)(2). Claims arising from trafficking-related offenses will be the value of the trafficked benefits. 7 CFR 273.18(c)(2).

It was already found that Respondent trafficked \$ [REDACTED] in FAP benefits. Thus, MDHHS established a recipient claim of \$ [REDACTED] in FAP benefits.

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 March 2016 through September 2016. It is further found that MDHHS established a recipient claim against Respondent for \$ [REDACTED] in FAP benefits. The MDHHS requests to establish a recipient claim 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

Via Email

DHHS

Demitra Owens
MDHHS-Wayne 55-Hearings

Counsel for Petitioner

H Daniel Beaton Jr
Department of Attorney General
AG-HEFS-MAHS

Petitioner

MDHSS-OIG-Hearings

Counsel for Respondent

Steven M Gittleman
2649 Caniff
Hamtramck, MI 48212

Via First Class USPS

Respondent

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