



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: September 20, 2018
MAHS Docket No.: 18-004314
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 30, 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 Jennifer Allen, 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 August 4, 2014, Respondent applied for FAP benefits. Boilerplate application language stated that selling FAP benefits for non-food items could result in IPV disqualification. (Exhibit A, pp. 93-122).

2. Respondent received FAP benefits for various months from August 2015 through June 2017. (Exhibit A, pp. 90-92)
3. 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. 71-86)
4. From January 2013 through June 2016, [REDACTED] Michigan (hereinafter "Store") averaged 713 Electronic Benefit Transfer (EBT) transactions per months with an average transaction of \$17.49. For most or all months from January 2013 through June 2016, Store's average EBT purchase more than doubled the average EBT purchase at other stores similar to Store in Store's general geographical vicinity. (Exhibit A, pp. 39-68)

5. From August 17, 2015, through April 17, 2017, Respondent made 14 purchases from Store totaling \$ [REDACTED] (Exhibit A, p. 130). Respondent's purchases included the following which were alleged by MDHHS to involve trafficking:

<u>Date</u>	<u>Amount</u>	<u>Time</u>
August 17, 2015	\$ [REDACTED]	
September 17, 2015	\$ [REDACTED]	
September 17, 2015	\$ [REDACTED]	
October 22, 2015	\$ [REDACTED]	
November 17, 2015	\$ [REDACTED]	
June 17, 2016	\$ [REDACTED]	
September 17, 2016	\$ [REDACTED]	
October 17, 2016	\$ [REDACTED]	12:01 a.m.
October 17, 2016	\$ [REDACTED]	11:47 a.m.
April 17, 2017	\$ [REDACTED]	

6. On an unspecified date, FNS performed an on-site investigation of Store. Investigative findings included the following: Store kept a supply of several Bridge cards (with corresponding personal identification numbers (PINs)), dozens of food items at Store were dusty and/or expired, Store had no shopping carts, and Store had no shopping baskets. Store was also found to have multiple mousetraps on its floor. (Exhibit A, pp. 4-5, 13-38)
7. On July 18, 2017, following an opportunity for Store to respond to allegations of trafficking FAP benefits, the Food and Nutrition Service (FNS) informed Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 11-12)
8. On April 20, 2018, MDHHS requested a hearing to establish recoupment based on \$ [REDACTED] for allegedly trafficked FAP benefits from August 2015 through April

2017. MDHHS also requested a hearing to establish an IPV disqualification of one year against Respondent. (Exhibit A, pp. 1-2)

9. 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 (Exhibit A, pp. 6-7) alleged that Respondent trafficked \$ [REDACTED] in FAP benefits at Store from August 2015 through April 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. 2.¹

An IPV is suspected when there is **clear and convincing** evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (October 2017), p. 1. 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).

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. 16.²

¹ See 7 CFR 253.8(a) and 7 CFR 273.16(c) for the corresponding federal regulations.

² See also 7 CFR 253.8(b) for the corresponding federal regulations.

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, and correspondence to Store. Photographs of mousetraps and dozens of expired food items were consistent that Store was a relatively unappealing vendor for food items. The documents also verified that Store was permanently disqualified from accepting EBT transactions due to past transactions that were consistent with trafficking.

Reports of EBT transaction summaries from stores in Store's area were presented. The reports verified that Store's average EBT transaction more than doubled that of stores similar in size and close in geography. From January 2013 through June 2016, Store's average transaction was \$17.49.

Of Respondent's 10 alleged trafficking transactions at Store, 9 were for amounts that more than quadrupled Store's average EBT transaction amount. Respondent's atypically large transactions at Store were consistent with FAP trafficking.

MDHHS alleged that Respondent's transaction for \$15.00 at Store also involved trafficking. The amount was prima facie suspicious for trafficking because it happened to be for an even dollar amount.³ MDHHS did not provide evidence that even-dollar amount EBT transactions at Store were consistent with trafficking. The \$15.00 transaction happened to occur on the same date and several hours after a transaction for \$[REDACTED]. Perhaps the \$15.00 EBT transaction was tied to the earlier transaction exceeding \$[REDACTED] but the timeframes are sufficiently distant that such a possibility cannot be inferred. MDHHS also did not establish that EBT transactions at Store on the same date as higher transactions were consistent with trafficking. Given the evidence, a single even dollar transaction for a relatively small amount is not clear and convincing evidence of trafficking.

MDHHS presented Respondent's EBT transaction history from the alleged IPV period (Exhibit A, pp. 125-129). Respondent's history listed dozens of EBT transactions at

³ Stores that engage in FAP traffic often pay \$.50 for \$1.00 in FAP benefits. Typically, clients who sell benefits request even dollar amounts of cash (e.g. \$30.00, \$50.00, \$100.00...). As a result, Stores that do not bother to disguise their traffic transactions will have unusually high amounts of EBT transactions for even dollar amounts.

various stores. Respondent's expenditure history was consistent with Respondent having ample opportunity to purchase food from stores other than Store.

Based on the evidence, MDHHS did not establish a \$15.00 transaction involved trafficking. The evidence established 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.

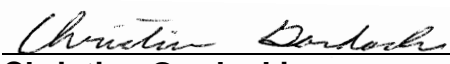
It was already found that Respondent trafficked \$[REDACTED] in FAP benefits. Thus, MDHHS established a basis to recoup \$[REDACTED] in FAP benefits from Respondent. MDHHS is not entitled to recoupment for the \$[REDACTED] transaction.

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 \$15.00 in FAP benefits at Store. The MDHHS request to establish recoupment for \$15.00 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 August 2015 through April 2017. 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

Lauren Casper
MDHHS-Macomb-20-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS