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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: October 1, 2018
MAHS Docket No.: 18-004486
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, September 5, 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 Mark Mandreky, 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 December 10, 2015, Respondent applied for FAP benefits. (Exhibit A, pp. 10-39). Boilerplate application language stated that persons may be disqualified and/or responsible for repayment of FAP benefits for FAP trafficking.

2. From December 2015 through April 2016, Respondent received ongoing FAP benefits. (Exhibit A, p. 40)
3. 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. 54-69)
4. On April 7, 2016, a \$ [REDACTED] purchase from [REDACTED] (hereinafter "Store") was made with Respondent's Bridge Card (Exhibit A, pp. 46-51).
5. On or near May 4, 2016, Food and Nutrition Service (FNS) performed an on-site investigation of Store and documented the findings in a report. Store was reported as a mobile food business with no fixed location. The FNS investigator noted that Store's reported storage facility included no items related to Store's business. Store's delivery vehicle appeared as if it had not been driven in a very long time (e.g. the tires had no air; the license plate expired more than 12 months earlier; and the state mobile food license expired). Store's vehicle included a freezer, which was not hooked up to the car's battery; instead, an electrical cord ran from the freezer to no power source. The FNS investigator opined that the freezer power looked staged. Store's total food inventory included 6 to 20 units of the following: beef, fish, and chicken. (Exhibit A, pp. 98-110)
6. On September 21, 2016, FNS sent Store correspondence informing Store that its Electronic Benefit Transfer (EBT) transactions from February 2016 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 multiple transactions from individual EBT accounts within unusually short timeframes, excessively large EBT transactions, and transactions which exhausted FAP account balances within short timeframes. (Exhibit A, pp. 71-73). A list of suspicious transactions at Store (Exhibit A, pp. 76-96) included single transactions were \$99.58 or higher; FNS also cited multiple transactions from short timeframes with totals exceeding \$99.58. Respondent's transaction for \$ [REDACTED] was among the suspicious transactions.
7. On October 6, 2016, following an opportunity for Store to respond to the FNS allegations, FNS informed Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 74-75)
8. On April 26, 2018, MDHHS requested a hearing to establish recoupment based on \$ [REDACTED] in allegedly trafficked FAP benefits from April 2016. 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. (Exhibit A, pp. 42-43)

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 in April 2016.

MDHHS may request a hearing to establish an IPV, 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).

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.

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

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 past transactions which were consistent with 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 \$99.58 and higher. Respondent's alleged trafficking transaction was for slightly less than four times the threshold amount set by FNS. The large amount of Respondent's transaction was consistent with trafficking at Store.

It was also notable that the FNS investigation of Store painted Store as a sham business. Store was supposedly a food delivery business. The FNS investigation revealed Store to have expired vehicle licensing and expired state food licensing as of the date of Respondent's alleged trafficking transaction. Additionally, neither Store's vehicle nor its freezer were operational at the time of FNS' investigation. The evidence was supportive in concluding that Store did not have a legitimate food delivery business at the time of Respondent's transaction with Store.

There are times when a person's geographical and/or travel restrictions limit that person from shopping at traditionally appealing food locations. MDHHS presented Respondent's EBT transaction history from the alleged IPV period (Exhibit A, pp. 44-45). Respondent's history listed 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 the evidence, it is found that Respondent clearly and convincingly trafficked \$██████ 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. 16.²

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.

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

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 in April 2016. 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

Jeanette Cowens
MDHHS-Wayne-41-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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