



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: October 4, 2018
MAHS Docket No.: 18-007059
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 October 1, 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 Clarice Bridges, 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.

The second issue is whether MDHHS established a basis for recoupment related to 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 March 9, 2015, Respondent submitted to MDHHS a handwritten application requesting Food Assistance Program (FAP) benefits. Respondent was the only member of his household. (Exhibit A, pp. 11-16)

2. On an unspecified date, MDHHS issued a \$3,000+ FAP payment to Respondent. The issuance was the result of a court ordering MDHHS to issue FAP benefits to clients who were improperly denied FAP benefits.
3. On February 21, 2017, a \$ [REDACTED] purchase was made with Respondent's Electronic Benefit Transfer (EBT) card. (Exhibit A, p. 20.) Items purchased included the following: \$ [REDACTED] in chicken wings, \$ [REDACTED] in "jerk sauce", \$ [REDACTED] in pancake syrup, \$ [REDACTED] in strawberry jelly, \$ [REDACTED] in grape jelly, \$ [REDACTED] in mayonnaise, \$ [REDACTED] in cayenne sauce, \$ [REDACTED] in hot sauce, \$ [REDACTED] in ketchup packets, 50 pounds of flour, and \$ [REDACTED] of Sprite Syrup. (Exhibit A, p. 28)
4. On June 29, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on trafficking of \$ [REDACTED] in FAP benefits.
5. Respondent has no prior history of IPV's.

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 may request a hearing to establish an intentional program violation. BAM 600 (January 2018), p. 5.

MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by selling FAP benefits. The allegations were consistent with an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) sent to Respondent as part of MDHHS' prehearing procedures.

An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

- (1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or
- (2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities. 7 CFR 253.8(a)

For FAP benefits only, an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. Trafficking is established by the selling 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 implicitly contended that a FAP transaction exceeding \$ [REDACTED] by a single individual is prima facie evidence of trafficking. Judicial notice will be taken that a purchase for over \$1,000 in food for a one-person FAP group is unusual.² In Respondent's defense, the transaction is primarily unusual because one-person FAP recipients do not usually have thousands to spend on FAP benefits. Respondent only had so much to spend because MDHHS was ordered by a court to issue over \$3,000 in retroactive FAP benefits to Respondent. Notably, no known law or policy prohibits clients from spending large amounts of FAP benefits. Given the evidence, the amount of Respondent's transaction provides little insight into whether trafficking occurred.

Respondent's alleged trafficking transaction might be more indicative of trafficking if Respondent, who had no authorized representative, was not present when the transaction was processed. MDHHS presented a photograph allegedly taken during the \$ [REDACTED] transaction. MDHHS was unable to establish who was making the large transaction. Thus, no inference can be made concerning who used Respondent's EBT card while making the alleged trafficking transaction.

MDHHS contended that Respondent's transaction "clearly" involved trafficking because the food items purchased were more likely to be used by a restaurant rather than an individual. MDHHS suspected that Respondent likely bought the food items so they could be sold to a food business. Indeed, items such as, 50 pounds of flour, more than \$50 in jelly, more than \$200 of sauce, and pop syrup are not items one would expect to be consumed by a single individual. Given the evidence, it is possible that Respondent sold the purchased food items to a restaurant. Given the evidence, it is no less possible that Respondent enjoys eating jelly and condiments and keeps a large supply for his personal use.

¹ See 7 CFR 271.2 for corresponding federal regulations.

² See MRE 201 for judicial notice requirements.

MDHHS provided no direct evidence of trafficking by Respondent. Respondent's large and unusual purchase is suspicious but is not clear and convincing evidence of trafficking. MDHHS alternatively contended that Respondent's purchase was unauthorized because Respondent could not have used the food items for himself.

Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits. 7 CFR 274.7(a).

The evidence to support alleged "unauthorized" use of a Bridge Card is functionally identical to the evidence to support trafficking. MDHHS contended that Respondent could not have bought the items purchased for \$[REDACTED] for himself. The contention was based on the argument that the items purchased were consistent with use of a restaurant, but not for an individual. MDHHS' contention is not persuasive because it is based on pure speculation of Respondent's dietary habits.

Given the evidence, it is possible that Respondent trafficked FAP benefits. Though such a possibility exists, the evidence did not clearly and convincingly establish such a possibility. Thus, it is found that MDHHS failed to establish an IPV by Respondent.

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. 16.³

A finding that Respondent did not commit an IPV precludes MDHHS from establishing a disqualification period against Respondent. Thus, the MDHHS request to establish a one-year disqualification period against Respondent is denied.

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 in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.⁴

MDHHS also attempted to establish a basis for recoupment for benefits allegedly trafficked by Respondent. The finding that Respondent did not commit an IPV or traffic benefits precludes MDHHS from establishing a corresponding basis for recoupment. Thus, MDHHS is denied their request to establish recoupment of \$[REDACTED]

³ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

⁴ See also 7 CFR 273.18(c)(1)(ii) for the corresponding federal regulations.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for recoupment of \$[REDACTED] in allegedly trafficked and/or unauthorized use of FAP benefits. MDHHS further failed to establish a basis to impose a one-year IPV disqualification against Respondent. The MDHHS requests to establish a basis for recoupment and a disqualification period against Respondent are **DENIED**.

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

Demitra Owens
MDHHS-Wayne-55-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
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