



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 12, 2018
MAHS Docket No.: 18-007868
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 scheduled for November 14, 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 Shawn Ellis and Jenna McClellan, regulation agents 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 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 August 17, 2016, Respondent submitted to MDHHS an electronic application requesting FAP. Boilerplate language stated that selling FAP benefits could

result in criminal penalties, repayment of benefits, and disqualification from benefits. (Exhibit A, pp. 15-52.)

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. 84-99.)
3. On May 18, 2017 MDHHS issued a supplement of \$ [REDACTED] in FAP benefits to Respondent. (Exhibit A, p. 14.)
4. On May 22, 2017, a \$ [REDACTED] purchase was made with Respondent's Electronic Benefit Transfer (EBT) card. (Exhibit A, p. 58.) The purchase was made at a store requiring membership. The purchase was made under the membership card belonging to a gas station licensed in the State of Michigan. (Exhibit A, pp. 76-81.) Respondent did not appear to be present for the purchase (Exhibit A, pp. 74-75.) Items purchased included the following:

Red Bull	\$ [REDACTED]	(x2)
Red Bull	\$ [REDACTED]	(x2)
Energy drinks	\$ [REDACTED]	(x5)
Monster Mega	\$ [REDACTED]	(x2)
Coke	\$ [REDACTED]	
Pepsi	\$ [REDACTED]	(x2)
Diet Coke	\$ [REDACTED]	
Mountain Dew	\$ [REDACTED]	(x4)
Pepsi	\$ [REDACTED]	(x2)
Fruit Rollups	\$ [REDACTED]	(Exhibit A, p. 69-72.)

5. On July 18, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period. MDHHS also sought to establish a recipient claim based on trafficking of \$ [REDACTED] in FAP benefits. (Exhibit A, p. 1.)

6. Respondent has no 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. 6-7) alleged that Respondent trafficked \$ [REDACTED] in FAP benefits on May 22, 2017.

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. MDHHS presented a receipt dated May 22, 2017, for \$ [REDACTED] in which Respondent's EBT Card was used.

MDHHS appeared to find the amount of Respondent's expenditure to be suspicious due to its large amount. Respondent was a group member of one person. Judicial notice will be taken that a \$500+ food purchase is unusual for one person and may be suspicious of trading benefits for cash.

MDHHS also presented evidence that Respondent's purchase was made by an owner of a gas station. MDHHS obtained the receipt from the purchase which was made at a store with customer membership. MDHHS learned that the member's account belonged to a gas station mart. MDHHS found this information suspicious for two reasons. First, Respondent's EBT Card was used by a person who was not authorized to use the card. Photos obtained by MDHHS from the transaction appeared to show a male and no sign of Respondent (who is assumed to be a female). Secondly, the items purchased in the

transaction (nearly all energy drinks and soft drinks) were items expected to be resold by a gas station mart, rather than those purchased by an individual receiving FAP benefits.

Given the curious items bought in the alleged trafficking transaction, the suspiciously large transaction amount, Respondent's apparent absence from the transaction, and that the transaction was made under a membership not belonging to Respondent, it is found that Respondent trafficked \$ [REDACTED] in FAP benefits. Thus, MDHHS established 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. 7 CFR 253.8 (b) and BAM 725 (January 2016), p. 16.

MDHHS did not allege Respondent was previously disqualified due to IPV. Thus, a one-year disqualification period is justified.

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 are 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 dated May 22, 2017. 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

DHHS

Mark Epps
MDHHS-Genesee 6-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

M Shumaker
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