



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: March 25, 2020
MOAHR Docket No.: 19-010074
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 March 9, 2020. MDHHS was represented by Patrick Waldron, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented. [REDACTED] Respondent's spouse, testified on behalf of Respondent.

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. From August 2016 through August 2017, Respondent received FAP benefits. Exhibit A, p. 70.

2. From August 6, 2016, through October 22, 2017, Respondent made 10 purchases from Samaha Market, Inc. of Detroit, Michigan (hereinafter "Store") totaling \$1,357.02. Respondent's purchases from Store included the following which were alleged by MDHHS to involve trafficking:

<u>Date</u>	<u>Amount</u>
August 17, 2016	\$151.89
October 22, 2016	\$185.75
December 18, 2016	\$192.39
January 15, 2017	\$191.29
February 20, 2017	\$180.00
April 20, 2017	\$163.39
August 26, 2017	\$157.12*
August 31, 2017	\$11.00* Exhibit A, p. 95

Transactions marked with an asterisk (*) were cited by the Food and Nutrition Service (FNS) as trafficking transactions by Store.

3. On December 14, 2017, FNS performed an on-site investigation of Store. Investigative findings included the following: Store was approximately 800 square feet, Store offered no shopping carts to customers, Store offered no shopping baskets to customers, Store did not use optical scanners at checkout, Store had no unusual pricing structure, Store did not round up or down items to nearest dollar, and a plastic barrier between customers and cashiers was utilized. The highest priced FAP-eligible items at Store were as follows: baby formula for \$17.99, "clove wole" for \$19.99, honey for \$24.99, and dates for \$24.99.
4. On February 21, 2018, FNS sent Store's owner correspondence stating that Store's electronic benefit transfer (EBT) transactions from June 2017 to December 2017 demonstrated "clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm." Suspicious EBT transactions included an unusual number with a same-cents value, multiple purchases occurring too rapidly to be credible, multiple transactions from individual accounts within a set time period, exhausting EBT accounts within unusually short time periods, and "excessively large" transactions.
5. On March 22, 2018, following an opportunity for Store's owner to respond to allegations of trafficking, FNS informed Store that it was "permanently disqualified" from accepting EBT transactions under Sections 278.6(c) and 278.6(e)(1) of SNAP regulations.
6. On [REDACTED], 2019, MDHHS requested a hearing to establish that Respondent trafficked \$1,232.83 in FAP benefits. MDHHS also sought to impose a 1-year disqualification period against Respondent for alleged trafficking.
7. As of the date of hearing, Respondent had 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 and to establish a recipient claim. Exhibit A, pp. 1-2. MDHHS may request hearings to establish an IPV disqualification and debt. BAM 600 (July 2019) p. 5. An unsigned Intentional Program Violation Repayment Agreement specifically alleged that Respondent trafficked \$1,232.83 in FAP benefits at Store. Exhibit A, pp. 6-7.

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 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 at Store 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 established by federal administrative proceedings to have engaged in FAP trafficking based on EBT transactions consistent with trafficking;
- Respondent had EBT transactions at Store which were consistent with Store's trafficking transactions;

- Therefore, Respondent trafficked FAP benefits.

MDHHS presented various documents from FNS' investigation of Store concerning trafficking. Exhibit A, pp. 47-64. FNS' investigation included photographs of Store (Exhibit A, pp. 53-64) and a list of Store's food inventory (Exhibit A, p. 49). Correspondence from FNS to Store's owner verified that on March 22, 2018, Store was permanently disqualified from receiving FAP benefits due to EBT transactions consistent with trafficking. Exhibit A, pp. 12-13. Specifically, Store's history of EBT transactions included the following: an unusual number with same cents value, multiple purchases occurring too rapidly to be credible, multiple transactions from individual accounts within a set time period, exhausting individual EBT accounts within unusually short time periods, and "excessively large" transactions. Exhibit A, pp. 14-16. MDHHS alleged that Respondent's EBT transactions at Store were consistent with Store's EBT trafficking transactions.

FNS cited Store for an unusual number of EBT transactions with a same cents value. Documentation listing Store's specific EBT transactions which were deemed fraudulent listed transactions ending in even-dollar and half-dollar amounts. Exhibit A, pp. 17-25. Of Respondent's 10 transactions at Store, three ended in even-dollar or half-dollar amounts, though only two were alleged to involve trafficking¹. The alleged trafficking transactions were for \$180.00 and \$11.00, for a total of \$191.00

FNS cited "excessively large" transactions at Store as suspicious for trafficking. Such transactions would be particularly unusual for Store which operated through a plastic barrier, offered no shopping carts, utilized only one EBT point-of-sale device, and did not optically scan items for quick and accurate pricing. Store was also relatively small at only 800 square feet. FNS set a threshold of \$126.99 as an excessively large EBT transaction. Exhibit A, pp. 40-45. Of Respondent's 10 transactions at Store, seven were "excessively large". Excluding Respondent's \$180.00 transaction, Respondent's excessively large transactions totaled \$1,041.83.

In its investigation of Store, FNS evaluated Store's EBT transactions from June 2017 to December 2017. Respondent had two transactions at Store during this period which were deemed by FNS to involve trafficking by Store. A conclusion by a federal agency that Respondent's FAP benefits were trafficked at Store is compelling evidence of trafficking by Respondent.

Respondent had 6 other EBT transactions at Store prior to June 2017. The earliest EBT transaction alleged by MDHHS to involve trafficking by Respondent occurred in August 2016. August 2016 is less than one year before the beginning of FNS' investigation period of Store. Though FNS only established trafficking transactions by Store beginning June 2017, a reasonable possibility exists that Store also trafficked benefits before FNS' investigatory period. Despite some of Respondent's alleged trafficking transactions occurring before Store's trafficking transactions, a reasonable possibility exists that Store was involved in trafficking before June 2017.

¹ On 1/15/17, Respondent had a transaction for \$4.50 two minutes following her \$191.29 transaction.

Respondent's alleged trafficking transactions at Store totaled \$1,232.83. Based on the evidence, Respondent clearly and convincingly trafficked \$1,232.83 in FAP benefits at Store. Thus, 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 1-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). MDHHS may request hearings to establish a debt. BAM 600 (July 2019) p. 5.

In the IPV analysis, it was found that Respondent trafficked \$1,232.83 in FAP benefits. The finding justifies establishment of a recipient claim of \$1,232.83 against 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. It is further found that MDHHS established a recipient claim against Respondent for \$1,232.83 in trafficked FAP benefits. The MDHHS requests to establish a recipient claim and a 1-year disqualification against Respondent are **APPROVED**.

CG/cg



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-55-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

