



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: October 23, 2018
MAHS Docket No.: 18-005985
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 [REDACTED], 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. As of April 2015, Respondent received ongoing FAP benefits. Exhibit A, pp. 102-105.

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 108-123.
3. From [REDACTED] through [REDACTED] Respondent made 29 purchases from River Rouge Deli of River Rouge, Michigan (hereinafter "Store") totaling [REDACTED]. Respondent's purchases included the following 21, which were alleged by MDHHS to involve trafficking:

Date	Amount
[REDACTED] 2015	[REDACTED]
[REDACTED] 2015	[REDACTED]
[REDACTED] 2015	[REDACTED]
[REDACTED] 2015	[REDACTED]
[REDACTED] 2015	[REDACTED]
[REDACTED] 2015	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2016	[REDACTED]
[REDACTED] 2017	[REDACTED]
[REDACTED] 2017	[REDACTED]
[REDACTED] 2017	[REDACTED]

(Exhibit A, pp. 80-81)

4. On February 1, 2017, the Michigan State Police Report drafted an investigative report concerning alleged FAP trafficking by Store. The investigation was performed jointly with the United States Department of Agriculture. The report documented nine transactions (totaling more than [REDACTED]) whereby Store accepted FAP benefits in exchange for cash and/or non-eligible item (e.g. beer, cigarettes...). During the time period, Store's average EBT transactions averaged over [REDACTED] per month while other stores in Store's area averaged approximately [REDACTED] month. USDA estimated that Store trafficked [REDACTED] in FAP benefits since 2014. Exhibit A, pp. 70-79.
5. On or near May 25, 2017, the Michigan Department of Agriculture & Rural Development investigated Store. Violations included Store kept an open bait of rat poison, Store had multiple roof leaks, and that Store's stations had a live trapped rat. (Exhibit A, pp. 11-14)

6. From [REDACTED] 2015 through [REDACTED] 2017, Store's average EBT transaction was \$16.07. (Exhibit A, p. 15)
7. On June 13, 2018, MDHHS requested a hearing to establish recoupment based on [REDACTED] in allegedly trafficked FAP benefits from April 2015 through April 2017. MDHHS also requested a hearing to establish an IPV disqualification of one year against Respondent. Exhibit A, p. 1.
8. 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) alleged that Respondent trafficked [REDACTED] in FAP benefits at Store from April 2015 through April 2017.

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).

¹ See 7 CFR 253.8(a) and 7 CFR 273.16(c) 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 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 a joint investigation by the Michigan State Police and USDA. The investigation included photographs of Store (which included expired foods), an investigation documenting undercover persons trading FAP benefits for unauthorized items at Store, a summary of Store's EBT usage compared to stores of similar size in Store's general vicinity, and a health violation report of Store. A regulation agent testified that Store's owner admitted to trafficking FAP benefits. The evidence sufficiently established that Store trafficked FAP benefits. MDHHS alleged that Respondent's transaction history at Store was consistent with trafficking.

Of Respondent's 29 EBT transactions at Store, 16 were for amounts ending in [REDACTED] values.² Such transactions are consistent with unnatural transactions. This conclusion is based on an understanding that [REDACTED] in FAP benefits are typically sold for [REDACTED]. For example, [REDACTED] in FAP benefits are often traded for [REDACTED] in cash. Having too many transactions for even dollar amounts such as [REDACTED] is a red flag for trafficking. Stores involved in trafficking will disguise such transactions by authorizing a transaction for a little more or less than an even dollar amount. In the present case, Store appeared to poorly disguise their trafficking transactions by having a suspicious and seemingly unnatural amount of transactions ending in [REDACTED]. Respondent's unusually high amount of transactions ending in [REDACTED] was consistent with trafficking by Respondent.

MDHHS also alleged that Respondent had 6 transactions at Store which did not end in [REDACTED] but involved trafficking. The transactions ranged from [REDACTED] to [REDACTED]. Given Store's health code violations, expired food inventory, and size, transactions of [REDACTED] at Store would likely be explained by trafficking. Given that Store's average EBT transaction from April 2015 through April 2017 (a time when Store trafficked FAP benefits) was [REDACTED], it is likely that transactions for more than double the average EBT transaction involved trafficking.

MDHHS presented Respondent's EBT transaction history from the alleged IPV period (Exhibit A, pp. 84-98). Respondent's history listed dozens of EBT transactions at various stores. Respondent's expenditure history was consistent with Respondent having ample opportunity to purchase food from stores other than Store.

² In addition to the 15 transactions alleged to be trafficking which ended in \$.99 values, Respondent also had a \$29.99 transactions which MDHHS did not allege to be trafficking.

MDHHS presented Respondent's EPPIC history (Exhibit A, pp. 99-100). Respondent's EBT card history listed no previous use of an authorized representative. Thus, it can be concluded that Respondent possessed the only EBT card throughout the alleged IPV period. Therefore, Respondent was most likely the person who made or authorized the alleged trafficking transactions.

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. 16.³

MDHHS did not allege a previous IPV by Respondent. Thus, a 1-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. 1-2.⁴

It was already found that Respondent trafficked ██████ in FAP benefits. Thus, MDHHS established a basis to recoup ██████ in FAP benefits from Respondent.

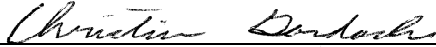
³ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

⁴ See 7 CFR 273.18(c)(2) for the corresponding federal regulation.

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 from April 2015 through April 2017. It is further found that MDHHS established a basis to recoup ██████ in FAP benefits from Respondent. The MDHHS requests to establish a debt and a 1-year disqualification against Respondent are **APPROVED**.

CG/tlf



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

Via Email:

[REDACTED]
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
MI [REDACTED]