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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 7, 2023
MOAHR Docket No.: 23-000293
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a hearing was held via telephone conference line on June 28, 2023. MDHHS was represented by Joseph Adcock, regulation agent with the Office of Inspector General. Respondent did not participate despite being given at least 15 minutes from the scheduled hearing time to call.

ISSUES

The first issue is whether MDHHS established that Respondent trafficked Food Assistance Program (FAP) benefits justifying an IPV disqualification.

The second issue is whether MDHHS established against Respondent a claim for trafficking 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 2019 through 2021, a Sam's Club membership of a former employee of [REDACTED] [REDACTED] (aka MG-2017 and hereinafter, "Store") was used for approximately 200 purchases totaling approximately \$50,000. Most of the purchases were made with the Electronic Benefit Transfer (EBT) cards of dozens of different FAP benefit recipients.

2. On unspecified dates, MDHHS investigated Store for buying FAP benefits at \$.50 per dollar and spending the benefits at Sam's Club under the membership of its former employee.
3. On September [REDACTED] 2021, Respondent's EBT card was used to purchase \$[REDACTED] in Red Bull energy drinks from Sam's Club using the store membership of Store's former employee.
4. On November 28, 2022, an assistant attorney general concluded that Store was engaged in significant FAP benefit trafficking and recommended pursuit of restitution against those involved.
5. On January 19, 2023, MDHHS requested a hearing to establish that Respondent trafficked \$[REDACTED] in FAP benefits. MDHHS also requested a hearing to impose a one-year FAP-related IPV disqualification against Respondent.
6. As of June 28, 2023, Respondent had no previous FAP-related IPV's.

CONCLUSIONS OF LAW

The 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 administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RTM).

MDHHS requested a hearing, in part, to establish against Respondent a one-year FAP-related IPV disqualification period. Exhibit A, pp. 1-2. An unsigned Intentional Program Violation Repayment Agreement alleged Respondent committed an IPV based on trafficking \$[REDACTED] in FAP benefits. Exhibit A, pp. 42-43.

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). An evidentiary standard of clear and convincing is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). 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 presented an Investigation Report documenting that a trafficking investigation commenced after learning that Store was engaged in FAP benefit trafficking. Exhibit A, pp. 4-5. The report documented that Store schemed to obtain EBT cards from willing FAP benefit sellers. The report further documented that someone from Store spent the FAP benefits at Sam’s Club under a store membership of a former employee of Store. MDHHS testified that the Seller’s EBT card would subsequently be returned to the benefit recipient along with cash based on the benefits spent at Sam’s Club.

To support the allegations against Store, MDHHS presented information of the Sam’s Club membership involved in Store’s alleged trafficking scheme. Exhibit A, p. 22. The investigation identified the person holding the membership as a former employee of Store.¹ MDHHS also presented documentation listing all Sam’s Club purchases made under the membership involved in Store’s alleged scheme. Exhibit A, pp. 9-20. The documentation listed dozens of purchases across 2019 through 2021 totaling thousands of dollars.² Most the purchases were paid with EBT benefits from dozens of different individuals.

To further support Store’s alleged trafficking, MDHHS presented a memorandum from an assistant attorney general dated November 28, 2022. Exhibit A, p. 8. The memo stated that criminal charges would not be pursued against two of Store’s employees. *Id.* However, the memo also stated the evidence fully supported charges against one of the employees, though charges would not be pursued due to his status as a minor at the time of benefit trafficking. *Id.* The memo also encouraged pursuing recoupment claims against those involved in the trafficking.

Store’s involvement in trafficking was not verified by a conclusive outcome such as a criminal conviction of an employee. However, an intent to prosecute by the Department of Attorney General but for the age of a trafficker is indicative of a probable trafficking scheme. Given the dozens of Sam’s Club transactions under a specific store membership and paid with FAP benefits of dozens of recipients, Store’s involvement in trafficking is sufficiently established.

¹ MDHHS indicated the former employee was unaware of the Sam’s Club membership and/or benefit trafficking involved with his Sam’s Club membership.

² I estimate approximately 200 transactions exceeding \$50,000 in FAP benefits.

MDHHS identified Respondent as a potential benefit trafficker from a Sam's Club purchase dated September [REDACTED] 2021. Exhibit A, pp. 35-37. The \$[REDACTED] purchase was made under the Sam's Club membership of Store's former employee. *Id.* The only item purchased was 17 cases of Red Bull energy drink. *Id.*

MDHHS testimony explained that energy drinks are the most trafficked item for small stores engaged in benefit trafficking. MDHHS further explained that schemes such as Store's allow for the resale of energy drinks with significant profit margins. MDHHS also reasonably expressed skepticism that Respondent would have purchased hundreds of dollars in energy drinks for personal consumption.

An EBT card purchase from Sam's Club under the store membership of another is peculiar, but reasonably explainable for non-trafficking reasons. When the store membership of "another" is established as involved in a trafficking scheme, trafficking is very possible. When the items purchased are hundreds of dollars of energy drinks, no reasonable non-trafficking explanation can be fathomed to explain the circumstances.³

Generally, persons should be aware that selling FAP benefits violates FAP regulations. For good measure, MDHHS presented a pamphlet that clients receive after applying for benefits which warns that selling FAP benefits could result in benefit disqualification and/or repayment.⁴ Exhibit A, pp. 46-61.

The evidence clearly and convincingly established that Respondent sold \$[REDACTED] in FAP benefits to Store for cash or consideration other than eligible food. Thus, MDHHS established that Respondent committed an IPV by trafficking FAP benefits.

Individuals found to have committed a FAP-related 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. Standard 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 720 (October 2017) p. 16.

MDHHS did not allege a previous FAP-related IPV by Respondent.⁵ Thus, a one-year disqualification is proper for Respondent's first FAP-related IPV.

MDHHS also requested a hearing to establish a recipient claim of \$[REDACTED] against Respondent. Exhibit A, pp. 1-2. 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).

³ Respondent's alleged trafficking transaction also happened to be the largest EBT purchases from September 2 through September 30, 2021. Exhibit A, pp. 31-33.

⁴ Respondent applied for FAP benefits on July 28, 2021. Exhibit A, pp. 23-29.

⁵ Documentation of Respondent's past FAP-related IPV's listed none. Exhibit A, pp. 38-39.

In the IPV analysis, it was found that Respondent trafficked \$[REDACTED] in FAP benefits. The finding that Respondent trafficked \$[REDACTED] in FAP benefits justifies granting MDHHS's requested claim of \$[REDACTED] 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 trafficked \$[REDACTED] in FAP benefits. The MDHHS requests to establish against Respondent a recipient claim of \$[REDACTED] and a one-year FAP-related disqualification against Respondent are **APPROVED**.

CG/dm



Christian Gardocki
Administrative Law Judge

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-Electronic Mail :

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