



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

██████████
██████████████████
██

Date Mailed: August 3, 2023
MOAHR Docket No.: 23-001030
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████ ██████

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 July 26, 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. On May █████ 2018, Respondent submitted to MDHHS an application for FAP benefits which included boilerplate warning that trafficking FAP benefits may result in benefit disqualification and/or repayment.
2. On September 24 and 25, 2018, \$██████ in FAP benefits were spent at ██████████ using Respondent's EBT card and a ██████████ membership card used by ██████████ & ██████████ (hereinafter, "Store") as part of a benefit trafficking scheme. Items purchased included \$██████ in energy drinks.

3. On an unspecified date, a Michigan State Police (MSP) investigation concluded that Store was involved in FAP benefit trafficking. The scheme involved Store making purchases from [REDACTED] [REDACTED] using the FAP benefits of willing benefit sellers. The trafficking purchases were made under various [REDACTED] [REDACTED] store memberships.
4. On March 2, 2021, [REDACTED] [REDACTED] the owner of store (hereinafter, "Owner") pled guilty to Food Stamp Fraud- \$250 or less and restitution to MDHHS of \$[REDACTED]
5. On February 24, 2023, MDHHS requested a hearing to establish that Respondent trafficked \$[REDACTED] in FAP benefits. MDHHS also requested a hearing to impose a two-year FAP-related IPV disqualification against Respondent.
6. As of July 26, 2023, Respondent had one previous FAP-related IPV.

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 (RFT).

MDHHS requested a hearing, in part, to establish against Respondent a two-year FAP-related IPV disqualification period. Exhibit A, pp. 1-2. An unsigned Intentional Program Violation Repayment Agreement alleged Respondent committed an IPV by trafficking \$[REDACTED] in FAP benefits. Exhibit A, pp. 79-80.

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).

An MDHHS Investigation Report documented that an investigation of Respondent began after Owner was convicted of trafficking FAP benefits. Exhibit A, pp. 4-5. Owner’s conviction came after a joint investigation between MDHHS and MSP. MDHHS testified that the investigation uncovered that Owner obtained EBT cards of willing FAP benefit sellers. *Id.* MDHHS testified that the investigation also uncovered that Owner subsequently used the EBT cards to spend FAP benefits at [REDACTED] [REDACTED] in conjunction with one of six different [REDACTED] [REDACTED] memberships associated with Store. Exhibit A, p. 83. MDHHS further testified that the investigation uncovered that, following the purchases, Owner paid cash to the FAP benefit seller based on the amount of benefits spent at [REDACTED] [REDACTED].

MDHHS did not offer the MSP report as evidence. However, circuit court county documents dated March 2, 2021, verified that Owner pled guilty to multiple counts of food benefit fraud of \$250 or less. Exhibit A, pp. 51-53. A condition of Owner’s plea was restitution of \$[REDACTED] to MDHHS, presumably representing the FAP benefits trafficked by Owner.

The evidence clearly and convincingly established that Owner and/or Store trafficked FAP benefits. MDHHS testified that its investigation identified Respondent as a seller of FAP benefits to Store.

MDHHS presented documentation of Respondent’s FAP expenditures. Exhibit A, pp. 42-80. MDHHS alleged that the following three purchases at [REDACTED] [REDACTED] totaling \$[REDACTED] involved trafficking:

<u>Date</u>	<u>Amount</u>	
September 24, 2018	\$[REDACTED]	
September 25, 2018	\$[REDACTED]	
September 25, 2018	\$[REDACTED]	Exhibit A, pp. 42-80.

As part of its investigation of Store/Owner, MDHHS obtained records from an investigating manager at [REDACTED] [REDACTED] Exhibit A, p. 57. Documentation of the details of Respondent’s alleged trafficking expenditures at Sam’s Club listed the items purchased which included \$[REDACTED] in energy drinks, with the remainder being other beverages. Exhibit A, pp. 59-64. More importantly, the documents identified that the purchases were made under a [REDACTED] [REDACTED] membership that was not Respondent’s. MDHHS testified that the police investigation identified six [REDACTED] [REDACTED] memberships used by Store/Owner when trafficking FAP benefits; MDHHS presented documentation with information of the six memberships. Exhibit A, p. 58. Sam’s Club membership associated with Respondent’s

FAP benefits was among the six memberships used by Store/Owner to traffic FAP benefits.

Based on Owner's FAP trafficking conviction, evidence linking Respondent's FAP expenditures to Owner, and the items purchased, MDHHS established that all of Respondent's transactions at [REDACTED] [REDACTED] involved trafficking. Thus, MDHHS established that Respondent committed an IPV by trafficking FAP benefits totaling \$[REDACTED]

Generally, FAP recipients should be aware that FAP benefit trafficking is improper. For good measure, MDHHS presented Respondent's application dated 5/[REDACTED]18. Applications include an Information Booklet warning that selling FAP benefits may result in benefit disqualification and/or repayment. BAM 110 (October 2022) p. 1.

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 alleged the present case established Respondent's second FAP-related IPV. MDHHS presented documents listing a previously imposed FAP-related IPV against Respondent and the corresponding administrative decision. Exhibit A, pp. 70-78. The evidence established that Respondent had a previous FAP-related IPV disqualification beginning November 2019. Thus, the present case is Respondent's second FAP-related IPV and a two-year IPV disqualification is proper.

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).

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 two-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 :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**
DHHS
Trista Waishkey
Washtenaw County DHHS
**MDHHS-Washtenaw-
Hearings@michigan.gov**

Policy-Recoupment

stebbinsN

BSC4HearingDecisions

Via-First Class Mail :

MOAHR
Respondent

[REDACTED]
[REDACTED]
[REDACTED]