



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

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[REDACTED]

Date Mailed: August 4, 2023
MOAHR Docket No.: 23-003400
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 Zoom video conference on July 31, 2023. MDHHS was represented by Patrick Waldron, regulation agent with the Office of Inspector General (OIG). Respondent participated and was unrepresented.

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 related to trafficking or attempted 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 [REDACTED] [REDACTED] 2022, Respondent applied for FAP benefits and acknowledged recipient responsibilities which included not selling FAP benefits.
2. On July 21, 2022, Respondent texted an individual offering to sell \$[REDACTED] in FAP benefits for \$[REDACTED] in cash.

3. On June 15, 2023, MDHHS requested a hearing to establish a recipient claim of \$█ against Respondent. Additionally, MDHHS sought to impose against Respondent a one-year IPV disqualification period for alleged trafficking of FAP benefits.
4. As of July 31, 2023, Respondent had no previous FAP-related 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, in part, to establish a one-year FAP-related IPV disqualification period against Respondent. Exhibit A, p. 1-2. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (July 2019) p. 5. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent committed an IPV by trafficking \$█ in FAP benefits. Exhibit A, pp. 44-45. 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 Electronic Transfer (EBT) cards. 7 CFR 273.16(c).

Acts that violate SNAP regulations include FAP benefit 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; trafficking also means the attempt of such. 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 Investigation Report documented that MDHHS received allegations on July 25, 2022, that Respondent trafficked FAP benefits. MDHHS followed-up by contacting the complainant who told MDHHS that Respondent sold FAP benefits for \$.50 per dollar. MDHHS also documented that the complainant reported he purchased \$[REDACTED] in FAP benefits from Respondent for \$[REDACTED] on July 22, 2022. MDHHS presented photos of the complainant's text history indicating an exchange with a name and phone number associated with Respondent.¹ The screenshots indicated Respondent texting, "I have [REDACTED] left for [REDACTED] cash" and "There is \$[REDACTED] on the card I will take bud if you got it." Exhibit A, pp. 23-28. A later text exchange indicated that Respondent provided the complainant with an EBT card but disabled it due to receiving a counterfeit \$[REDACTED] bill as payment. Exhibit A, pp. 30-37.

The evidence was highly suggestive that Respondent attempted to sell \$[REDACTED] in FAP benefits. When asked about the texts, Respondent acknowledged he trafficked FAP benefits.

Generally, persons should be aware that selling FAP benefits violates federal regulations. For good measure, MDHHS presented documents that FAP benefit responsibilities were discussed with Respondent during an interview on May 18, 2022.² Exhibit A, pp. 15-21.

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

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.³ 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).

¹ The phone number matched Respondent's phone number as reported on a benefit application dated May 14, 2022. Exhibit A, p. 8.

² MDHHS also presented Respondent's electronic application for FAP benefits dated May 14, 2022. Exhibit A, pp. 8-14. FAP applicants have to acknowledge rights and responsibilities within an Information Booklet. BAM 110 (October 2022) p. 1.

³ Documentation of past FAP-related IPV by Respondent listed none. Exhibit A, pp. 49-50.

In the IPV analysis, it was found that Respondent trafficked \$■ in FAP benefits. The finding that Respondent trafficked ■ in FAP benefits justifies granting MDHHS's requested claim of \$■ 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 \$■ in FAP benefits. The MDHHS requests to establish against Respondent a recipient claim of \$■ 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 :

Petitioner
OIG
**MDHHS-OIG-
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MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
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[REDACTED]