MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Department of Licensing and Regulatory Affairs

Robyn Kay,

 Petitioner,

v DOCKET NO. 2011-1165

Michigan Commission for the Blind,

 Respondent.

 /

DIGITALLY RECORDED Trial

BEFORE ADMINISTRATIVE LAW JUDGE MEADE

Lansing, Michigan - Wednesday, May 2, 2012

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TABLE OF CONTENTS

 PAGE

WITNESSES: PETITIONER

ROBYN KAY

 Direct Examination by Mr. Robinson 08

 Cross-Examination by Mr. Hull 22

 Redirect Examination by Mr. Robinson 28

WITNESSES: RESPONDENT

JOSHUA HOSKINS

 Direct Examination by Mr. Hull 37

 Cross-Examination by Mr. Robinson 41

 Redirect Examination by Mr. Hull 46

|  |  |  |
| --- | --- | --- |
| EXHIBITS: | IDENTIFIED | RECEIVED |
| RX-1 | Spreadsheet | 46 | 48 |

Lansing, Michigan

Wednesday, May 2, 2012 - 9:06 a.m.

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P R O C E E D I N G S

ALJ MEADE: And we’ll go on the record in the matter of Robyn Kay, Petitioner, versus Michigan Commission for the Blind, Respondent. It’s Docket Number 2011-1165. It’s May 2nd, 2012. We’re beginning at 9:06 a.m. We’re at the Michigan Administrative Hearing System, on the second floor of the Ottawa Building, in Lansing, Michigan. And I’m Robert Meade, I’m the administrative law judge assigned to hear this matter.

David Robinson’s here on behalf of the Petitioner, Ms. Kay, who’s also present. James Hull is here on behalf of the Respondent. And Mr. Hull, who do you have with you today?

MR. HULL: Ms. Amber Lockwood, she’ll be assisting me, doing some reading of documents.

ALJ MEADE: All right. And I see a gentleman in the back; is he with you?

MR. HULL: He is. That’s Mr. Joshua Hoskins.

ALJ MEADE: All right. Thank you. The hearing is being recorded, so when you do testify, you just make sure you keep your voice up and try to speak one at a time.

It looks like this matter concerns an issue whether the Business Enterprise Program’s in violation of certain rules in regards to activities at Ms. Kay’s former site of 3411 North Martin Luther King, in Lansing, Michigan. She filed her request for an administrative hearing, looks like through Mr. Robinson, back on August 16th, 2011. On August 22nd, 2011, a request for hearing was received from the Michigan Commission for the Blind, and on that same date, a Notice of Hearing was issued setting a hearing first for September -- is that right? Yep, September 27th, 2011. We’ve had a number of adjournments since that time, but ultimately we’re rescheduled for today’s date and time.

The guidelines for the hearing will be as follows: The hearing will be conducted in accordance with Public Act 260, Administrative Rules 393.1 and following, and the Michigan Administrative Procedures Act. Evidence of a type commonly relied upon by reasonably prudent persons may be admitted for consideration. Evidence may be oral or written. Irrelevant immaterial or unduly repetitious evidence may be excluded. Objections to offers of evidence may be made and will be noted for the record, as will any determination to exclude evidence. Each side will be given an equal opportunity to present their respective positions.

Ms. Kay, you’re the Petitioner today, so we’ll start with you. What we’ll do is swear you in, Mr. Robinson will ask you some questions while you’re under oath, Mr. Hull will ask you some questions under cross-examination. We’ll then take evidence from the Respondent and follow the same procedure.

At the close of the record, I’ll issue what’s called a recommended decision, and then that would go to the full commission for a final decision at the administrative level.

Any questions at all, about the procedure, Mr. Robinson?

MR. ROBINSON: No.

ALJ MEADE: And Mr. Hull?

MR. HULL: No, Your Honor.

ALJ MEADE: Any preliminary matters, Mr. Robinson, that we need to deal with?

MR. ROBINSON: No, I don’t believe so.

ALJ MEADE: Mr. Hull?

MR. HULL: No, Your Honor.

ALJ MEADE: All right. And Mr. Robinson, did you wish to make an opening statement before we get in to the testimony?

MR. ROBINSON: No, Your Honor, I don’t think so.

ALJ MEADE: All right. Mr. Hull?

MR. HULL: Yes, Your Honor, just a brief statement.

ALJ MEADE: Okay.

MR. HULL: It’s the Commission’s understanding that this matter is specifically focused on one particular site and the loss of this site within the program. In dialogue with Ms. Kay and her representative, we’ve been given the impression that they believe that we should not have lost that site. And the Commission intends to demonstrate that, while we attempted to maintain that site, our promulgated rules and the Public Act 260 that we operate under do not exclusively mandate that site as a part of our program, and therefore, we can only be there on invitation and that that invitation had lapsed, which was the cause for the events that unfolded after the closure of the site.

ALJ MEADE: All right. Thank you. And Mr. Robinson, do you wish to call the Petitioner, then, as a witness first?

MR. ROBINSON: Yes, I’d like to call Robyn Kay.

ALJ MEADE: All right. And Ms. Kay, if you can, then, come up to the witness stand. You can actually -- well, this is the court reporter stand, but --

MS. KAY: Sorry.

ALJ MEADE: There’s a seat right here that might actually be easier for everyone to get to.

MS. KAY: Okay.

ALJ MEADE: And you’ve got a little table in front of you there --

MS. KAY: Okay. Thank you.

ALJ MEADE: -- put your stuff down. And Ms. Kay, if you could raise your right hand, please. Do you swear that the testimony you’re about to give will be the truth, the whole truth, and nothing but the truth?

MS. KAY: Yes, sir.

ALJ MEADE: And what is your current address?

MS. KAY: 351 South Roiston, R-o-i-s-t-o-n, Eaton Rapids, 48827.

ALJ MEADE: Perfect, thank you. Go right ahead, Mr. Robinson.

MR. ROBINSON: Okay.

Robyn Kay

DULY SWORN BY THE JUDGE, TESTIFIED AS FOLLOWS:

Direct Examination

by MR. ROBINSON:

1. Robbie, I’m going to ask you a series of questions just to reiterate some of the -- the activity relevant to when -- the closure of the military facility out on North MLK, so just -- you know, when you respond, just answer the question and I’ll try to be as specific about it as possible. If you don’t understand what the question is, please ask me to repeat it, okay?
2. Okay.
3. And then we’ll go from there. Now, are you a -- are you a licensed operator in the Business Enterprise Program?
4. Yes.
5. And what facility do you -- are you licensed to operate? What --
6. 203.
7. Facility 203, which is the --
8. Lansing Vending Route.
9. -- Lansing Vending Route? In the description of your facility, how would you describe that -- the Lansing Vending Route? Is that a specific geographic area or do you cover a certain area?
10. East Lansing, Okemos, Lansing, Grand Ledge, and Dimondale. I have facilities in all of those.
11. So, is it true that you have a variety of sites throughout the Lansing area community?
12. Yes.
13. Do you know how many -- do you know how many sites you currently operate?
14. No, not really, because I’ve lost so many over the last year, because they went back to their own buildings, so I’ve lost them.
15. Okay.
16. I’m losing a couple more right now as I speak.
17. Okay. It went --
18. Probably 15.
19. Fifteen?
20. Yeah.
21. Okay. And under the circumstances with the military facility, the National Guard armory at the 3411 and 3423 North MLK, which is the -- the site under discussion today, when -- when did that facility close? When did that site close?
22. Site close all together or --
23. Yes.
24. -- from the time they called me?
25. When did that site close all together?
26. I may have to look again. I wrote it all down, so hang on one second. Dates, ‘cause it’s been awhile, so, I think it was the 18th of -- 18th of April 2011.
27. In -- in an email that was -- in an email communication between you and your promotional agent, it was indicated that the last -- the last day for the facility to be authorized to be open by the -- by the military representative, Ms. Kim Gram (ph), all machines were supposed to be out of the buildings by --

MR. HULL: Objection, leading.

ALJ MEADE: All right. Maybe you can provide her the email, Mr. Robinson, --

MR. ROBINSON: Sure.

ALJ MEADE: -- and she can summarize it.

MR. ROBINSON: She has it, though.

ALJ MEADE: Do you have a copy of that email?

THE WITNESS: Do I?

MR. ROBINSON: I’m sure she does.

THE WITNESS: Yeah.

MR. ROBINSON: Yeah.

by MR. ROBINSON:

1. Okay. So, --
2. That was -- go ahead, sorry.

ALJ MEADE: Why don’t you just summarize what you learned from that email?

THE WITNESS: Okay. She called me on the phone and left a voice message.

ALJ MEADE: Who -- who are you talking about?

MR. ROBINSON: And you’re talking about Ms. Gram?

THE WITNESS: Kimberly Gram.

MR. ROBINSON: Okay.

THE WITNESS: I was in the hospital that day having surgery, so I didn’t get back with her that day, I didn’t even know about it. And the next day I did, but on the voice message it says that there’s nothing I did wrong and they only wanted the machines out of the one room where they were going to put an Army PX store in there, and I could keep the rest of the vendors in all the other rooms and at the 3411 no problem. And then I informed Josh by email that I was losing it because they were putting a PX store in there, so that was the first part. That was all I was supposed to lose.

I don’t know what happened after that. It spiraled out of control and after that I was the bad guy, that I did all these things wrong. And I found out before I got the rest of my stuff out of 3411 that Ameri-Vend was in there. So, it wasn’t an Army PX store, it was Ameri-Vend --

by MR. ROBINSON:

1. Okay. All right. Well, remember --
2. I’ll just wait.
3. Let me clarify something first, Robbie. The -- the 3411 facility on North MLK, that -- how long did you -- how long had you had that particular location?
4. Eight/nine years.
5. Nine years, okay.
6. Yeah.
7. The 3423 address --
8. Actually, I should say I had it when it was at 2500 West Washington, and then they moved it out there, and then I had it out there too.
9. Okay. That was because they moved the National Guard headquarters from Washington to out to North MLK?
10. Yes.
11. Is that correct?
12. Yes.
13. Okay. Then -- then -- can you tell me, then there’s another address that we’re dealing with here, the 3423 North MLK, that building, how long did you have that particular building?
14. A couple years.
15. Okay.
16. Probably about two.
17. Okay. So, you had the -- you had vending machines that you serviced in both buildings?
18. Yes. And then the third one that was out front, just a soda machine in that one.
19. So, there was a third building that you provided service to on that complex?
20. Yes. I didn’t even know the address, ‘cause we just kind of went through the little walk way to get into that building, so I just never, you know, found out the address, because I didn’t really think I needed it.
21. When you were informed -- when you were informed that the vending machines at 3423 building were supposed to be removed because they were bringing in a PX store or something to that effect, when you were informed that you were supposed to remove those machines by a certain date, was -- was that completed on that date or prior to that date --
22. Prior to that date, it was a little after. It was a few days after they had gave me the date of May 3rd.
23. Okay. They gave you the date of May 3rd and it was completed after that?
24. Yes.
25. Did you remove all the -- did you remove your product and inventory from all of those machines or -- or just the ones on that specific floor that you testified --
26. Just the one in that room.
27. Okay. When was it -- when were you told, then, that the machines from both 3423, including all floors, and 3411 were supposed to be removed?
28. Well, that was part of the discrepancy. The way it was, Josh had sent me an email saying that I had to be out at 3411 too, but he specified that there was machines on the third floor, and that’s when I emailed back and said, “There’s no third floor at 3411. Are you sure you’re talking about 3411 or are you talking about 3423?” Because I did have machines on the third floor at 3423. We never really had got the communication right on that, so I ended up having to have them out by June 7th.
29. Okay. The --
30. But I didn’t know about that still. I didn’t know it was supposed to be that building yet.
31. You did not know it was supposed to be what building?
32. 3411. I thought it was supposed to be, ‘cause, you know, in the emails it was like the two buildings, I had three, and I -- I emailed back and I said, “I have three, are you sure? Which ones are you talking about?” And he did say 3411 and 3423, but I was inquiring about the other building that was hooked to 3423, ‘cause that’s the one I was supposed to go out of.
33. And the confusion that was not clarified came about because of the comment about the third floor machine?
34. Yes.
35. Okay. Did -- did you then -- did you then get notice that you were supposed to have your inventory out of the machines by a certain date?
36. Yes.
37. And what -- what date was that? Do you recall?
38. The 7th of June.
39. The 7th of June?
40. It’s been so long, I have to look, sorry. It’s a little hard to -- she said I had to have the ones out of the first building in the one room in May, by May 5th, 3rd or 5th, now I can’t remember, ‘cause the email dates are kind of messed up here. But, then, in all the confusion, talking back and forth to Josh, I kept understanding it was 3423, and I ran over there, ‘cause he said he was going to have to go there himself and take all the stuff out of there, so I went there with the building manager and got the stuff out of 3423, thinking that’s the one that they meant. And that was on the same day that he went to the other building and did take all my stuff out of it, because I didn’t realize it was that building too, ‘cause I had never got the right confirmation about it being 3411, because of the third floor thing.
41. Okay. Did you -- did you -- once the -- once the product was removed from 3423 and you took that product out, then you found out that your promotional agent had taken the product out of 3411, did -- was all your product, all your inventory removed from those machines, all the machines at 3411?
42. All of the machines that were owned by the Commission for the Blind, not the soda.
43. Not --
44. Not the soda machines.
45. Okay. So, you’re saying that your PA removed the product that were in -- was in the machines owned by the Commission for the Blind, which included what machines?
46. Okay.
47. Just what kind of machines?
48. A snack with an ice cream, two different machines, bill changer, snack machine downstairs, and a cold food machine.
49. Did you -- did you get that inventory returned to you?
50. Yes.
51. Okay. Now, what -- what happened to your inventory that was in the soda machines?
52. I had to go take it out.
53. And --
54. I took it out with the building manager.
55. And then -- and what was the date that you removed that inventory?
56. Okay.
57. If you don’t know exactly what it is, can you give me -- can you give --
58. I think -- I believe it was June 9th, ‘cause it was just shortly after the other inventory was taken out, by the Commission, because that’s when I went in and found out there was Ameri-Vend in there, saw their machines.
59. Okay. So, -- so, --
60. About the 9th.
61. -- let me just get clarification on this. Then your PA came in and removed some of your inventory and then you went back in and removed the rest of your inventory because you were informed that the -- that the -- this particular site, at 3411, was going to be closed by the Commission for the Blind at the request of the -- a landlord, which is the military --
62. Right.
63. -- National Guard?
64. Yes.
65. And -- and did -- and did you get that -- did you get that on your amended agreement, that you no longer had those sites?
66. No, I haven’t got any agreement.
67. Well, you signed a -- originally you signed an agreement with the Commission to operate sites on the Lansing Vending Route; is that correct? Originally, when you first --
68. Originally, yes.
69. And you had an agreement?
70. Yes.
71. You made the statement that sites -- you’ve lost some sites, including the one at the National Guard, periodically from time to time.
72. Yes.
73. Are those -- have that -- has that been -- have those sites that have been closed, have those been taken off of your agreement?

MR. HULL: Objection, asking for evidence not entered.

ALJ MEADE: Hold on a second. I’m sorry, Mr. Hull?

MR. HULL: Mr. Robinson is asking Ms. Kay to testify about a document that’s not been entered into evidence.

ALJ MEADE: Well, I mean, she can testify as to her knowledge of the document, if she knows.

THE WITNESS: No, I haven’t had anything revised or anything.

by MR. ROBINSON:

1. Okay. Okay. In the -- in the -- in the administrative review on this issue, it was -- it was -- it was recommended that the -- that the Commission for the Blind reimburse you for -- and agreed to by the Commission, reimburse you for lost product and the locks that were lost because the promotional agent had to drill those locks out of the machines, because you were unaware that particular day that they had to be out of there?
2. He didn’t have to drill them out. He got a hold of Bill, our repair guy, --
3. Uh-huh.
4. -- Bill Butler, and Bill Butler had a key, ‘cause I give him a key, because he repairs a lot of my machines and I can’t be there for some of them.
5. So, did you receive that reimbursement?
6. Yes.
7. Okay. Did you receive the locks that were your property?
8. No.
9. You didn’t receive any locks back?
10. No.
11. Were those locks your property?
12. Yes.
13. Okay.
14. I personally bought those locks.
15. Yes. And did -- okay. So, and also within that administrative review, there was -- there was a discussion, and you -- this was a part of the review was for you to have the opportunity to -- to, because of the loss through no fault of your own, that the Commission was going to seek other sites, that would help to replace the lost income from the military site?
16. Yes.
17. Have you -- as of this date, has those sites -- has the sales for the lost sites been replaced by other sites?
18. No.
19. So, you’ve received no other sites since that time?
20. No.
21. Okay.

MR. ROBINSON: Okay. I think that’s all I have for now.

ALJ MEADE: All right. And Mr. Hull, any questions for Ms. Kay?

MR. HULL: I have a few questions, Your Honor.

ALJ MEADE: All right.

Cross-Examination

by MR. HULL:

1. Ms. Kay, you just testified a moment ago that you were never reimbursed for the locks and that you never received --
2. No, no. He said -- he asked me about receiving the locks. I did say I got my reimbursement from them, a minute ago.
3. Okay. So, I guess I misheard you, so I would like to be clear.
4. Okay.
5. You’re saying that you did not receive your property, those locks back, but that the Commission did pay you the value that you said those locks were worth?
6. Right. Yes.
7. Okay. And the Commission also paid you for some additional inventory that was at that site that was not saleable when it was returned to you; is that correct?
8. Yes.
9. Okay. Did the Commission reimburse you for product that you had purchased for that site that you were not able to sell at that site due to exposure?
10. Yes.
11. And was the Commission obligated to do that under the promulgated rules, to the best of your knowledge?
12. To the best of my knowledge, I don’t know.
13. Okay. You said that, as of this date, the date of the administrative review, that you have not had any additional sites added to your vending route, correct?
14. Correct.
15. Have you worked with your promotional agent to try to establish any new sites?
16. I emailed him several, several, several times, “Please let’s go out and get them. Please let’s go out and get them,” and we haven’t gotten them. I have several emails about that and we still haven’t gone out and got them.
17. Okay. Well, you don’t currently have them, but do you know, from your personal knowledge, has your promotional agent worked at those sites year around?
18. Do what know?
19. To your knowledge, do you know if your promotional agent has worked to get those sites?
20. He went with me one day he went with me, we went and saw the one, the DHS that I found.
21. Mm-hmm.
22. And as the department, I had called you on the same one, but we didn’t go to that one. We were going to work on getting the first one first.
23. Mm-hmm.
24. And he’s told me numerous times that he’s inquired to them and they haven’t gotten back with him. And all I’ve said was, “Let’s just go,” because it’s mandated to the blind, so we can just tell them that, you know, it’s mandated and there’s nothing they can do about it --
25. So, you’re saying --
26. -- to ease it for -- I’m sorry.
27. No, go ahead, please.
28. Well, to ease it so that they don’t think we’re just, you know, pushing everybody out to the side and being mean about it or anything like that. I said, “Let’s just blame it on the rules,” you know, that state facilities are mandated for the blind.
29. What under the promulgated rules force a particular building to accept vending?
30. I guess I don’t know. I thought all state buildings were mandated to the blind --
31. Okay.
32. -- under the law -- rules.
33. Okay. You had testified a little bit earlier that the military had asked that you remove your equipment on North Martin Luther King because they wanted to install a PX; is that correct?
34. Yes, I have the -- I have the voicemail and the email saying it was for Army -- Air Core of Engineers was going to come in and put a duty free store in, something like that. I mean, I have all that, I have the voicemail on my phone still. That was the first phone call I got about it.
35. Okay. But if all state facilities are mandated for the blind, then how could they force you out of that site?
36. I thought that was federal.
37. That’s a part of the Department of Military and Veteran Affairs within the State of Michigan; is that correct?
38. Yes.
39. To your knowledge?
40. Yes.
41. So, wouldn’t that not qualify as a state facility?
42. I suppose so, I guess.
43. Okay. So, then it’s possible that there are extenuating circumstances that do not necessarily provide all state buildings fall under the mandated Public Act 260.
44. Okay.
45. I’m asking.
46. Oh, that all --
47. To your knowledge.
48. -- state facilities?
49. To your knowledge, are there exceptions to the mandate that all state facilities fall under?
50. From what I know about the military was they were mandate -- this is what I know or think I know, I should say, that the militaries mandated to the blind, unless it’s a training facility, and that’s an office. Those are office buildings, so, I thought they were still mandated. When I talked to you about it last year, you said you didn’t -- we didn’t know if it was mandated yet and we’d have to go through the, oh boy, attorney, state attorney, to find out if it was mandated or not, and I never heard anything back from you guys about it being mandated or not. That’s one reason I’m here. I wanted to know if it’s mandated or not, because at that time you guys didn’t know if it was mandated.
51. Okay. So what you’re saying is that at this time, to your knowledge, you’re still not aware as to whether or not the site or sites listed at those addresses are mandated, correct?
52. Yes, sir.
53. Okay. To your knowledge, is there any provision in the promulgated rules that requires the Commission to make up a shortage of income from the closure of a site?
54. I don’t know.
55. Okay. Do you know if other vendors incur either temporary or permanent closures of sites on their vending routes, as well?
56. Yes.
57. And to your knowledge, do you know, has the Commission reimbursed them for over purchasing or product losses from those closures?
58. I have no idea about that.
59. Okay.

MR. HULL: No more questions at this time, Your Honor.

ALJ MEADE: All right. Mr. Robinson, any follow up?

MR. ROBINSON: Yeah.

Redirect Examination

by MR. ROBINSON:

1. Yeah, Robbie, when -- when you -- when you were -- when you originally leaving that facility, you felt that -- leaving that facility at North MLK, with the National Guard, which is a -- which is a state -- state function, did you -- did you realize -- did you know what your -- what the impact of that was going to be on your business as a whole?
2. I did email the Commission and told them, if I lost that, that was about a third of my profit of $25,000. I just had my taxes done. It was $30,000 I lost last year from the year before.
3. And -- and in that loss, the difference in the income from -- of $30,000, do you know if that came from the National Guard closure, or from other site closures, or how -- did you have --
4. It’s the National Guard, ‘cause I made good money out at those places, very good money. I was taking at least $600 to $700 out a week, just out of one building alone.
5. And do you know what your -- do you know what your sales, your total sales for your vending route was prior to the closure of the North MLK facility?
6. You mean from last year?
7. From -- from last, yeah, last --
8. From the taxes?
9. No, what your sales were prior to the closure.
10. Do I know what my sales were?
11. Yeah.
12. For the complex?
13. No, just -- no.
14. For all around?
15. For your total facility, your total Lansing Vending Route.
16. I have them down in that bag over there. I didn’t bring them up here --
17. Just give me -- give me a ballpark.
18. Well, like I said, I lost $30,000. That’s what my tax lady had explained to me --
19. Okay.
20. -- is that I was $30,000 less than I was the year before.
21. Okay. But I’m looking for --
22. Oh, the number?
23. -- the total number of sales for your facility prior to the closure of --
24. I’d have to look at -- I’d have to get those papers out down there.
25. Do you know what your -- do you know what your total sales for your entire Lansing Vending Facility is currently?
26. It’s in those files down there.
27. Okay.
28. I didn’t know I was going to have to know exactly that, but I did bring it.
29. Okay. So, in terms of the -- what I’m -- and so, you feel that it would be helpful to you if you had some additional sites that would make up for that -- for those losses?
30. Yes. And can I explain why?
31. Yes, go ahead.
32. Okay. Because of all the rest of the stops that I have, I’m kind of letting them down, because I can’t keep the total inventory that I used to keep for the whole business, because I can’t afford that big, you know, selection that I was giving all my other buildings. Now they’re not getting as much as they were getting, because it’s not -- it’s not so much the afford, it’s the fact that things will go outdated too fast because I don’t have enough facilities to accommodate all the extra that I would have to buy to keep all my other facilities the way I used to keep them. So I’m letting my other facilities down.
33. Did you -- did you -- did you find that the -- the inventory that was -- that you carry was -- was adequate for all of your facilities, the amount of inventory that you had to carry --

MR. HULL: Objection, relevance.

ALJ MEADE: I’ll note your objection. Go ahead, Mr. Robinson.

by MR. ROBINSON:

1. You were talking about your inventory, and your rotation of your inventory, and how -- what it impacted the North MLK facilities made on that. Do you feel that you have -- you have adequate inventory to service those -- the machines you currently have plus others that the promotional agent may secure for you if you have additional sites?
2. Not at this time.
3. And if you -- if you receive additional sites, would you be able to service those sites?
4. Yeah, ‘cause I -- ‘cause I could get more inventory and at least build my other facilities up where they’re getting what they were getting before.
5. So you would just purchase additional inventory?
6. Right.
7. Okay.
8. It’s because of the timeline of the dates. When they go out of date, I can’t just buy all that stuff that I used to buy for all my facilities, and I would end up with outdated stuff before then, because I don’t have the extra buildings to fulfill the dates of the inventory to keep my other facilities happy, put it that way.
9. You -- you had stated that you did not know whether or not the Commission for the Blind had an obligation to provide new -- new sites to make up for lost sites.
10. Right. Yes.
11. Do you -- do you know how many sites you had referred to your promotional agent or your promotional agent and you had talked about regarding adding to your -- adding to your Lansing Vending Route?
12. You mean the ones that I found?
13. You found or that he found that would be helpful to you.
14. We found TSA and I found three, I found two at the Eaton County complex, and I found one right there by my storage unit, 6333 Lansing Road, and those were the three that I wanted to go secure, because we -- my husband and I went searching for some desperately, and that’s what we found. We found somebody else was in there vending.
15. Was -- was there a willingness on the part of the Commission following your administrative review to work with you to find additional sites?
16. Yes.
17. Okay. So, they had said that they would be willing to work with you to find additional sites? Okay.

MR. ROBINSON: Okay. No further questions.

ALJ MEADE: All right. Mr. Hull, anything else?

MR. HULL: Not at this time, Your Honor, but I would like to reserve the right to recall Ms. Kay for a recross.

ALJ MEADE: All right. Ms. Kay, you can have a seat back next to Mr. Robinson. Any other witnesses, Mr. Robinson?

MR. ROBINSON: No, Your Honor.

ALJ MEADE: All right. And Mr. Hull, any witnesses today?

MR. HULL: Your Honor, at this time, the Commission would like to make a motion for dismissal.

ALJ MEADE: All right.

MR. HULL: The Petitioner has failed to present a prima facie case demonstrating any violation of any promulgated rule.

ALJ MEADE: All right. Mr. Robinson, did you want to respond to that before --

MR. ROBINSON: I think there’s definitely -- we have shown that there is a violation of -- of Rule 18 regarding the maintenance of equipment at a facility that’s been assigned to the licensed operator. The licensed operator was clearly assigned to the -- to the -- to service the machines at 3411 North MLK, as well as 3423 North MLK. It was her understanding that the 3423 was going to close, but had no indication that 3411 was going to close, and in fact, that they still, as of -- as of this date, have not modified her agreement to indicate that she has -- she has an obligation to service those machines at 3411 North MLK.

And in fact, she was -- because she -- her inventory was retained at the soda machines once the promotional agent removed those, she had -- she had an obligation to continue to service those machines even after that particular -- that particular removal of her other inventory. So, she was still licensed to operate those machines and the Agency clearly violated her agreement to operate specific machines, vending machines, at that particular location. And even to this date, her agreement has not been modified to -- to say that she should not service machines at 3411 North MLK.

ALJ MEADE: All right. Thank you. I’m not familiar enough with the rules in question to take a ruling on your motion, at this point, Mr. Hull, so why don’t we continue, if you did have any evidence that you wanted to present, and I’ll take your motion under advisement and address it in the recommended decision.

MR. HULL: Your Honor, a five minute recess then?

ALJ MEADE: Okay. We’ll go off the record. It is 9:44.

MR. HULL: Thank you.

(WHEREUPON, a brief recess was taken at 9:44 a.m.)

ALJ MEADE: And we’re back on the record in the matter of Robyn Kay versus Michigan Commission for the Blind. It’s now 9:56 -- 54, I can’t read that clock, a.m.

Mr. Hull, did you have any witnesses today?

MR. HULL: Yes, Your Honor. We’d like to call Joshua Hoskins to the stand.

ALJ MEADE: All right. Mr. Hoskins, you can have a seat over in this one. Yep.

And if you could raise your right hand, a little low.

MR. HOSKINS: Move back a little there.

ALJ MEADE: Do you swear that the testimony you’re about to give will be the truth, the whole truth, and nothing but the truth?

MR. HOSKINS: Yes, Your Honor.

ALJ MEADE: All right. And please state and spell your full name for the record.

MR. HOSKINS: Sorry, I’m getting used to the chair. Joshua Hoskins. Do you want me to spell my last name or both?

ALJ MEADE: Both, please.

MR. HOSKINS: J-o-s-h-u-a, last name is Hoskins, H-o-s-k-i-n-s.

ALJ MEADE: Okay. Is that chair going to be okay or do we --

MR. HOSKINS: No, that’s fine.

ALJ MEADE: -- want me to grab another one?

MR. HOSKINS: I’m just adjusting.

ALJ MEADE: Okay. You’re used to it now, okay.

Go ahead, Mr. Hull.

Joshua Hoskins

DULY SWORN BY THE JUDGE, TESTIFIED AS FOLLOWS:

Direct Examination

by MR. HULL:

1. Mr. Hoskins, what is your role with the Agency?
2. My job is promotional agent.
3. And how long have you served as promotional agent?
4. Just over two years.
5. And what are, generally, the duties of a promotional agent?
6. Work with the operators to develop their business, work with them on their business, work with equipment and procure new equipment, make sure equipment is running properly, and facilities are run in accordance to the regulations.
7. Okay. And as part of those responsibilities of monitoring regulations, do you monitor rules?
8. Yes, sir.
9. So, you’re familiar with the promulgated rules in Public Act 260?
10. Yes, sir.
11. Are you familiar with Section 10 of Public Act 260?
12. Yes, sir.
13. And what specifically does Section 10 reference?
14. Section 10 of Public Act 260 references the facilities that are exempt from the Business Enterprise Program.
15. And what are some examples of facilities exempt from the Business Enterprise Program?
16. One example is military installations.
17. And is the locations in question today considered military installations?
18. Yes.

MR. HULL: Your Honor, at this time we’d ask you to take judicial notice of Section 10 of Public Act 260 of 1978.

ALJ MEADE: All right. I’ll do that.

by MR. HULL:

1. Mr. Hoskins, do the promulgated rules speak to exemptions?
2. Yes, they do.
3. And which rule in particular speaks to that?
4. Rule number one.

MR. HULL: Your Honor, at this time we ask that you take judicial notice of R393.1 sub rule HH.

ALJ MEADE: All right. I will do that.

MR. HULL: Thank you.

by MR. HULL:

1. Mr. Hoskins, do the promulgated rules guarantee a wage to an operator?
2. No, they don’t.
3. What do the promulgated rules say, in regards to income for operators?
4. Rule, I believe it’s 18, states that 120 percent of federal income -- of federal minimum wage, I’m sorry.
5. States what? 120 percent of federal minimum wage, what is that?
6. That is the expected income out of an operator.
7. Expected, but not guaranteed?
8. Correct.
9. Currently, are you aware of what the federal minimum wage is?
10. Yes.
11. And what would be?
12. Seven dollars and fifteen cents.
13. So, 120 percent of that annually would be approximately how much?
14. Approximately $17,000.
15. To your knowledge, does the Lansing Vending Route bring in net proceeds that exceed that number?
16. Yes, they do.
17. Okay. Earlier we had testimony that the Commission had agreed to develop some additional sites for the Lansing Vending Route. Have you worked on that with Ms. Kay in the past year?
18. Yes, I have.
19. And what sites have you worked on developing?
20. The sites that I’ve worked on developing are the DHS in Eaton County and the TSA facility at the Lansing Airport.
21. And what progress have you had with those?
22. Still in -- working in progress to secure those locations.
23. It’s been 12 months. What has caused such delays on getting these locations?
24. Working with building managers, and procuring the equipment, and developing the space takes time.
25. So, but you’re still committed to developing these sites and adding them to the Lansing Vending Route?
26. Yes.

MR. HULL: Your Honor, no further questions at this time.

ALJ MEADE: All right. Thank you.

Mr. Robinson, questions for Mr. Hoskins?

MR. ROBINSON: Yes.

Cross-Examination

by MR. ROBINSON:

1. Mr. Hoskins, you stated that you had worked with -- with Robyn Kay to develop the sites, these new sites for her Lansing vending facility. How many times -- how many times have you visited locations she has referred you to?
2. Off the top of my head, I am not sure. I have been to TSA several times.
3. Did you visit -- did you visit the location, the 633 Lansing Road -- 6333 Lansing Road that she had mentioned in her testimony?
4. No, I have not been to that facility or that site yet.
5. Were you aware that she -- of that facility, that she wanted you to look into that facility --
6. Yes.
7. -- or that location?
8. Mm-hmm, yes.
9. Okay. When -- when we talked about the federal minimum wage, 120 percent of the federal minimum wage, that is -- what exactly is that? Is that a -- is that a required for the operator to make or is that something that is sort of a ballpark figure that is expected?
10. It’s expected.
11. Is it the obligation -- is it the obligation of the operator to -- to have a facility -- if a facility falls below that, that minimum wage requirement, is it the obligation of the operator to -- to build their facility up to the point where they can make a 120 percent of the --

MR. HULL: Objection, relevance. Mr. Hoskins has already testified that the facility in question is exceeding that.

ALJ MEADE: All right. It seems to be the case, Mr. Robinson. What are you getting at?

MR. ROBINSON: He -- well, it may be -- it may be -- it may be -- he testified that it may be exceeding that. He hasn’t presented any evidence that it has.

MR. HULL: Your Honor, --

ALJ MEADE: Well, I mean, if she’s going to dispute that, I guess, then we can allow it, but she would have to testify --

by MR. ROBINSON:

1. My only reason why to ask that is it -- is it -- the 120 percent of the federal minimum wage is a standard that’s applied in the rules; is that correct, standard for minimum operation?
2. Are you asking me?
3. Yes.
4. Okay. I’m sorry, can you repeat the question?
5. Is the -- is the rule regarding the 120 percent of the prevailing federal minimum wage, is that a standard -- is that a standard for the operator or is that a standard for the program function?
6. That’s a standard for the program.
7. Okay. Now, when -- when you were -- when you were taking -- when you were closing the facility at the 3411 North MLK, was it your understanding at that point in time that -- that the military representatives had had disinvited -- disinvited the Commission for the Blind and stated this was not a mandated facility?

MR. HULL: Objection. That’s not a question that was offered under direct. Does not pertain to anything offered under direct.

ALJ MEADE: All right. I’ll note your objection. You can answer.

THE WITNESS: Will you repeat the question, please?

by MR. ROBINSON:

1. Did you -- were you aware that the military, when you closed the facility, that they were claiming that it was not a mandated facility?
2. I -- I don’t want to say that was the reason. It was their decision to close the facility.
3. Okay. Okay. So, then you then, because they -- because the military decided to close the facility, they asked the Commission for the Blind to remove their equipment and inventory from the -- the two buildings, 3411 and 3423 North MLK?
4. Yes.
5. Okay.

MR. ROBINSON: Okay. That’s all.

ALJ MEADE: All right. Mr. Hull, anything else?

MR. HULL: Your Honor, if I might have a 30 second recess only.

ALJ MEADE: Okay.

MR. HULL: I apologize, to provide some assistance in locating a specific document.

ALJ MEADE: Okay. Go right ahead.

MR. HULL: Thank you, Your Honor.

ALJ MEADE: Mm-hmm.

MR. HULL: Your Honor, the Commission would like to offer Respondent Exhibit, I suppose, One, A, I’m not quite sure, which way we want to do this.

ALJ MEADE: We’re going to go with One.

MR. HULL: Okay.

ALJ MEADE: I don’t think there were any Petitioner exhibits.

MR. HULL: Okay. May I approach?

ALJ MEADE: Yes, mm-hmm.

MR. HULL: This is a copy of a spreadsheet for the last 12 months, Your Honor.

ALJ MEADE: Thank you.

MR. HULL: And may I --

ALJ MEADE: Yeah, go right ahead.

Redirect Examination

by MR. HULL:

1. Mr. Hoskins, can you identify the document that you have in your hands?
2. This is a facility report for the Lansing Vending Route.
3. And can you identify the period of time that that report covers?
4. April 2011 through March 2012.
5. So that would be the past 12 months of reports submitted for the Lansing Vending Route; is that correct?
6. Correct.
7. And can you identify where on that document it says what the net proceeds to the operator would be?
8. Under proceeds.
9. And under proceeds, can you approximate what the total proceeds for the past 12 months have been for the Lansing Vending Route?
10. I would say approximately $28,000.
11. Twenty eight thousand as income to the operator?
12. Yes.
13. And that exceeds the 120 percent of federal minimum wage that’s expected for a facility based on your understanding; is that correct?
14. Yes.

MR. HULL: Your Honor, at this time we ask that the Court accept this document as Respondent’s Exhibit One.

ALJ MEADE: All right. Mr. Robinson, any objection?

MR. ROBINSON: No. No, sir.

ALJ MEADE: All right. I’ll accept Exhibit One.

(WHEREUPON, Respondent’s Exhibit Number One was admitted at this time)

MR. HULL: Thank you, Your Honor. No further questions.

ALJ MEADE: All right. Mr. Robinson, any other questions for Mr. Hoskins?

MR. ROBINSON: No. No, sir.

ALJ MEADE: All right. Mr. Hoskins, thank you.

MR. HOSKINS: Thank you.

ALJ MEADE: You can have a seat. And any other testimony from Ms. Kay, Mr. Robinson?

I should ask, Mr. Hull, any other witnesses?

MR. HULL: No, Your Honor. Thank you.

ALJ MEADE: Okay. Mr. Robinson, anything else for Ms. Kay?

MR. ROBINSON: No, sir.

ALJ MEADE: All right. And how about closing statement, Mr. Robinson?

MR. ROBINSON: Yes, sir. Robyn Kay is a licensed operator within the Business Enterprise Program, has been operating a Lansing Vending Route for several years, and has been -- has been, from time to time, have lost sites and have sites added because of the nature of the business of buildings closing or people moving around in a geographic area.

For many reasons, for many reasons, there’s been a decline in her -- in her sales, primarily because of closing of sites. She has asked several times for the Commission for the blind to work with her to develop locations, to help to improve the viability of the Lansing Vending Route.

Does it meet the federal minimum wage, we believe that, at least under the promulgated rules, yes, it does. Yes, it does. As far as getting -- we’ve never contended that they were in violation of that particular rule. We also never contended that the Commission was -- was required to keep the military -- military affairs sites at 3411 and 3423 North MLK open, if, in fact -- open or for the Business Enterprise Program if, in fact, those locations were declared to be non-mandated facilities and were subject to invitation only as far as servicing or vending equipment. But there was a clear indication that there needed to be some investigation of that particular rule regarding -- regarding the exception to the required mandated facilities. As Ms. Kay stated in her comments, she believed that because the facility was a -- an office complex and not a training -- a military training establishment, that they did fall under the mandated rule. And that is still something that is questioned, and is a concern, and has not been answered by the Commission for the Blind in an official capacity, as of yet.

And in fact, our only contention is that, when those facilities were closed, the Commission for the Blind did not affect communication that allowed Ms. Kay to remove her inventory and conduct her business in a proper manner, and she was forced to remove her equipment -- her inventory in a manner that caused her to lose product. Now, she did get reimbursed for the product, but we also contend that she was still licensed for those sites after the removal of her inventory by Josh Hoskins. And we -- and she still had to operate those pop machines until she finally removed those -- those -- that inventory upon the removal of the vending equipment by the pop companies.

So, even the fact that they -- they took their vending machines out and left the pop machines, she was still licensed after that to run those facilities. And until today, she still does not have an amended agreement that says she doesn’t operate those locations. So, and an agreement, sir, is one that is a contract between the Commission for the Blind and the operator to operate specific locations, with specific products, at specific times, for specific reasons, and that -- that agreement has not been amended to reflect that.

So, we contend that all we want is for the Commission for the Blind to work diligently with Ms. Kay to improve the Lansing Vending Route, not only for her benefit currently, but for future operators who may operate this facility, and that she be given some type of timeframe where these facilities, these sites, will be secured for her and for this particular facility.

And in fact, we know of one site that was available just recently and was given to another operator without following the necessary promulgated rules, regarding site selection, two different facilities. So, we are now -- we are concerned that the Commission for the Blind does not have any intention, despite the promises that were made, despite the comments that were made, despite all the other conjectures that were made, regarding locations and -- and her -- her diligent effort to find sites and to refer them to her promotional agent have not been fruitful, that she feels that there will be no -- there’s no intention, no intention to try to build up her Lansing route facility again, so that she can enjoy a viable income that’s available -- that was available to her, prior to the closing of the North MLK facility.

ALJ MEADE: All right. Thank you.

And Mr. Hull, closing statement?

MR. HULL: Yes, Your Honor. At no time in the hearing today was any evidence proffered that the Commission was in violation of any rule. At no time today was any evidence proffered that Ms. Kay suffered undue burden from the closure of her facility due to loss of inventory. As a matter of fact, it was offered on her testimony, by Ms. Kay, that the Commission reimbursed her not only for the inventory that she lost because it was unsalable at the time it was returned to her, but also for inventory that she had purchased to place in the equipment that she didn’t end up needing and was able to potentially sell at another location, but was not, because of the dates, as she has mentioned in your testimony.

At no time did Mr. Robinson demonstrate that the Commission had failed to do anything, in regards to developing new sites. As a matter of fact, when given the opportunity to talk to Mr. Hoskins about his development of sites, he referenced one location out of several that had not been developed. But in no way, shape, or form, through cross-examination, direct examination, or proffered evidence, demonstrated in any way, shape, or form, that the Commission had failed to attempt to develop sites. And Mr. Hoskins has testified competently that he has been working with building management to try to develop these sites and that it does take time.

In his closing statement, Mr. Robinson attempted to taint the process of assigning sites by referencing sites being inappropriately assigned without offering any evidence or testimony to support this claim.

We ask that the Court reconsider the previous motion by the Commission for dismissal of this as no evidence has been presented that the Commission has failed to act properly in any capacity, whatsoever, in regards to this. It’s always the Commission’s intention to develop as many sites as we can to help to increase the economic independence and livelihood of each of our members. We will continue to do that, regardless of who the vendor is, where the facility is, or who the promotional agent is. It is one of the things that each of our staff people, from promotional agents up to the program manager, are required to work on and we will continue to do that.

But we can’t set timelines of when buildings that are not under the Commission for the Blind’s control allow us to place equipment and assign vendors. We have to work with the building managers, with the property landlords, in order to place our equipment in order to assign it to vendors, and we will continue to do that. And at no point today did Mr. Robinson present any evidence or testimony to show otherwise. Thank you.

ALJ MEADE: All right. Thank you. As I said in the beginning, I’ll do a written recommended decision and you’ll get a copy of that in the mail shortly, okay? All right. We’ll go off the record. It is 10:15.

(Proceedings concluded at 10:15 a.m.)

STATE OF MICHIGAN)

 ) SS

COUNTY OF OAKLAND)

C e r t i f i c a t e

I hereby certify that this transcript, consisting of fifty-six (56) pages, represents the complete, true, and correct rendition of the recording of the proceedings and testimony taken in this case as recorded on May 2, 2012.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible in the recording of the proceedings.

 Amber Huffman

Amber Huffman, CER #8378

Certified Electronic Reporter

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Date: May 17, 2012