

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 201273382
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: October 17, 2012
County: Wayne DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request for a hearing by the Department of Human Services (DHS). After due notice, a telephone hearing was held on October 17, 2012 from Detroit, Michigan. DHS was represented by [REDACTED], Regulation Agent for the Office of Inspector General (OIG). Respondent did not appear and the hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(3).

ISSUES

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an overissuance of benefits which may be recovered through debt collection actions.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing FAP benefit recipient.
2. Over an unspecified period, Respondent spent \$4534.70 at a particular fruit market which is allegedly known to traffic FAP benefits.
3. On 9/4/12, DHS requested a hearing to establish that Respondent committed an IPV by trafficking FAP benefits and to establish a debt against Respondent in the amount of \$4534.70.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 (8/2012), p. 3.

IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (1/2011), p. 1. DHS defines trafficking as the buying or selling of FAP benefits for cash or consideration other than eligible food. Bridges Program Glossary (4/2012), p. 45.

IPV is suspected when there is **clear and convincing** (emphasis added) 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 (1/2011), p. 1. A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

The Code of Federal Regulations defines an IPV. Intentional program violations 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 the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. *Id.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

DHS conceded the evidence against Respondent was circumstantial. Generally, circumstantial evidence is less persuasive than direct evidence, however, at some point, it may accumulate to a clear and convincing case. The DHS argument against Respondent for trafficking FAP benefits is as follows:

- there exists a fruit market (for purposes of this decision, the market will be referred to as "Store") where FAP benefit trafficking is rampant;
- the market has a limited supply of food where it is unlikely that someone would regularly purchase over \$50 in food;
- over a period of time, Respondent regularly spent over \$50 per purchase at the market;
- therefore, Respondent trafficked FAP benefits.

DHS presented a history of monthly FAP benefit transactions (Exhibit 24) for Store. The report showed dramatic changes in total FAP benefit transactions from 7/2010 (\$28,476.84) to a high of \$109,142.86 in 10/2011 to a low of \$3023.25 in 3/2012. The same report also showed the average FAP benefit transaction for Store ranging from \$56.73-\$82.49 over the period of 7/2010-2/2012 and dropping to \$7.30 in 3/2012. DHS stated that the dramatic drop in FAP benefit usage 3/2012 coincided with the initiation of a criminal complaint of trafficking against the store's owner. DHS contended that the difference between the FAP benefit transactions in 3/2012 from the prior months is that Store did massive business when trafficking FAP benefits and immensely less business when not trafficking FAP benefits.

DHS also presented further monthly summaries (Exhibit 26-35) of convenience stores located near Store. The reports covered a period of 1/2011-3/2012, though the fruit market reputedly engaged in FAP trafficking was not listed on the 3/2012 summary. The summaries showed that Store generally, but not always, accepted more FAP benefit transaction than other stores. The report also generally showed that the fruit market had a substantially higher average FAP benefit transaction (ranging from \$64.11-\$82.49) than other stores. It should be noted that there were months (5/2011, 6/2011 and 7/2011) when other listed store had average transactions that approached or exceeded Store's average transactions.

DHS presented pictures (Exhibits 36-39) to demonstrate the limited food supply inside Store. The pictures appeared to show salad dressings, steak sauce, pickles and other items which were allegedly expired as a representation of the store's limited food supply. It should be noted that the pictures did not appear to be a full representative of the store's inventory; items such as chips, pop and candy were said to be sold at the store but not shown in the pictures.

The case presented by DHS against the fruit market was compelling; it was also immensely lacking in procedural reliability. DHS alleged there was a criminal complaint pending against the store where FAP benefits were trafficked. A complaint is an allegation of wrongdoing. It is the first step in establishing wrongdoing, but is not evidence of wrongdoing.

DHS alleged that the store's owner stated that all FAP purchase over \$50 were due to FAP trafficking. DHS indicated that the statement was made to an investigator in the federal complaint. The statement is third-hand hearsay and unverified. The alleged statement is not deemed to be reliable.

The statistical summaries provided by DHS showed unusual FAP benefit usage at the particular store. This evidence would lead a competent investigator to compile evidence in preparation for a criminal complaint. It is likely that the store's owner would have difficulty in explaining the unusually high amount of FAP benefit usage at the store. In such a criminal investigation, the owner has the constitutional rights of a trial, to testify and to rebut damning evidence and to present exculpatory evidence. However, in a FAP trafficking hearing against Respondent, no such opportunity exists because the owner has no stake in the matter. Respondent would have no reasonable way to present evidence defending the store. Theoretical reasons exist to explain the store's high sales over the course of a year. It is possible that the store offered irresistible sale prices for a year. It is possible that the store did a lot of advertising at DHS offices over the period when the FAP transactions were high. It is possible that the store's employees were skilled at selling to DHS clients. The point of listing such possibilities is partly to show that possible scenarios can exist to explain the unusual FAP benefit usage. But the more important point is that Respondent cannot be reasonably expected to explain the store's FAP benefit usage and the store's owner who could rebut such evidence is not a party in the administrative hearing. Thus, the unrebutted and seemingly compelling evidence against the store lacks a degree of reliability because it has not undergone due procedural scrutiny.

The evidence presented against Respondent consisted solely of Respondent's FAP benefit spending history (Exhibits 12-23). The spending history verified regular purchases exceeding \$100 by Respondent at Store.

The evidence against the store was compelling but lacked procedural reliability. The evidence against Respondent offered procedural safeguards in that Respondent received notice of the hearing and could have appeared and explained her transactions; but the evidence was exceptionally unpersuasive. DHS assumed that Respondent trafficked FAP benefits essentially because the store's food inventory was unimpressive. DHS conceded that Respondent could legitimately make regular food purchases from the store but that it would require bulk purchases of chips, candy, pop and other items. The undisputed fact that Respondent could make legitimate purchases from Store makes it difficult for DHS to clearly and convincingly establish Respondent trafficked FAP benefits.

DHS estimated that Respondent lived nine miles from Store. DHS contended that Store's mildly inconvenient distance from Respondent's residential address made it more likely that Respondent trafficked FAP benefits. It is possible that Respondent had a friend or workplace located near Store. It is possible that Respondent liked Store's employees and prices well enough to drive nine miles out of her way. Even when considered with other evidence, once a month purchases from a store nine miles from

Respondent's home can barely qualify as evidence of FAP benefit trafficking by Respondent.

The DHS case against Respondent was not merely circumstantial, it was a circumstantial case within a circumstantial case. It cannot be stated with much certainty that Respondent did not engage in FAP benefit trafficking. It can be stated with certainty that DHS failed to present clear and convincing evidence that Respondent engaged in FAP benefit trafficking. Accordingly, it is found that DHS failed to establish an IPV against Respondent. There remains the issue of debt collection against Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. The present case concerns an alleged OI of \$1401. Establishing whether DHS or Respondent was at fault for the OI is of no importance because DHS may seek to recoup the amount in either scenario.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

Though the standard for debt collection (preponderance of evidence) is lower than that for establishing IPV, DHS did not present sufficient evidence against Respondent to meet the lower standard. As noted above, it is theoretically plausible that Respondent indeed trafficked FAP benefits, but the proof to justify such a finding is sorely lacking. Accordingly, DHS is also denied from pursuing debt collection actions against Respondent as it relates to FAP benefit trafficking.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that Respondent committed an Intentional Program Violation stemming from alleged FAP benefit trafficking. It is further found that DHS failed to establish a debt against Respondent concerning FAP benefit trafficking. DHS is ordered not to pursue IPV or debt collection actions against Respondent for alleged FAP trafficking.

The hearing request of DHS is REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 10/29/2012

Date Mailed: 10/29/2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Respondent may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Respondent:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

