

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
DETROIT MI 48212

Reg. No.: 20136280
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: January 16, 2013
County: Wayne DHS (55)

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 January 16, 2013, 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).

DHS motioned for a default judgment based on Respondent's absence from the hearing. The motion was denied as DHS cannot meet the burden of proof required for establishing an intentional program violation or a debt collection simply based on Respondent's absence.

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. Respondent used FAP benefits at a store subsequently administratively established to have engaged in FAP benefit trafficking.

3. Over the period of 2/2009-11/2011, Respondent spent \$4184.79 in FAP benefits at Store through 237 different transactions.
4. On 10/22/12, 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 \$4184.79.

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 by trafficking FAP benefits. 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 alleged that Respondent engaged in FAP benefit trafficking from 2/2009-11/2011, totaling \$4184. DHS conceded the evidence against Respondent was circumstantial. Generally, circumstantial evidence is less persuasive than direct evidence, however, at some point, the circumstantial evidence may accumulate to a clear and convincing case. The DHS argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (for purposes of this decision, it shall be known as "Store") where it was administratively established that food trafficking was sufficiently rampant to result in Store's loss of accepting FAP benefit purchases;
- Store has a limited supply of food where it is unlikely that someone would make regular and/or large purchases of food;
- over a period of time, Respondent regularly purchased food at Store using FAP benefits;
- therefore, Respondent trafficked FAP benefits.

The testifying agent stated that the store lost their ability to accept FAP benefit purchases following an unspecified federal administrative process. DHS also alleged that Store's FAP benefit trafficking was so severe that criminal charges were filed against the owner of the store. The store's exhaustion of administrative remedies and the pending criminal charges against the store were not verified; nevertheless, the testimony from DHS will be accepted as accurate. It is found that Store engaged in significant FAP benefit trafficking to result in administrative disqualification of accepting FAP benefit purchases.

The primary argument against Respondent is that Store's limited food supply made it unlikely that Respondent's FAP benefit purchases were for eligible FAP benefit items. DHS presented pictures (Exhibits 10-17) in an attempt to demonstrate the limited food supply inside Store.

The primary argument against Respondent is that Store's limited food supply made it unlikely that Respondent's FAP benefit purchases were for eligible FAP benefit items. DHS presented pictures (Exhibits 10-17) in an attempt to demonstrate the limited food supply inside Store.

Two pictures (Exhibits 10-11) showed supposedly expired canned goods. The expiration dates of the allegedly expired canned food were not legible.

Another picture (Exhibit 14) showed a small section of items with a bunny design; presumably the items were food items related to Easter. DHS claimed that the pictures were taken several months after Easter. The picture also showed cereals, canned goods and marshmallows.

A picture (Exhibit 12) of a counter and items for sale was presented. This picture showed a large variety of candy bars for sale at \$.75 each.

DHS presented two pictures (Exhibits 16-17) of numbered envelopes. The relevance of the envelopes was not established.

The pictures failed to give a full description of Store's inventory eligible for FAP benefit purchase. For example, DHS testified that Store had at least one cooler of beverages, though this was not presented in picture form. DHS also conceded that Store sold chips and other bagged snack items though these were not clearly identified by picture. Though Store's inventory was certainly smaller than more traditional grocery stores, it is reasonably possible that a person could make valid FAP benefit purchases among Store's eligible food inventory. Most significantly, the pictures fail to clearly illustrate that Store's food inventory is so decrepit that it is highly improbable that a person would make significant and repeated legitimate purchases.

DHS presented Respondent's FAP benefit history (Exhibits 18-81). DHS contended that whenever a client's FAP benefit transaction was keyed (represented by a "K" in the purchase history) the transaction was more likely to involve trafficking. DHS noted that keyed transactions require a store to possess a FAP benefit card number, but not the card itself. DHS explained that FAP trafficking often involves large transactions which are not representative of Store's typical FAP benefit purchases. Thus, stores engaged in benefit trafficking often break up larger transactions into smaller ones to hide the fraud. To hide the fraud further, the transactions are broken up over hours or days; but this requires keying a transaction unless the store keeps possession of the trafficking client's benefit card.

From 2/18/09-6/6/09, Respondent's transaction with Store exclusively involved swiping Respondent's benefit card. Over the course of 6/9/09-1/21/11, Respondent's FAP purchases from Store were all keyed. Over the course of 6/9/09-1/21/11, Respondent's transactions with other stores were also keyed. The logical conclusion to draw concerning Respondent's 6/9/09-1/21/11 transactions is that Respondent's FAP benefit card strip was malfunctioning. Based on the presented evidence, whether a FAP transaction was swiped or keyed is of zero probative value.

Over the course of 2/2009-11/2011, Respondent spent \$4184.79 in FAP benefits at Store through 237 different transactions. Over the approximate 138 week period, Respondent's transactions work out to approximately 1.7 purchases per week totaling \$32.19/week. Looking only at Respondent's purchases from Store, there is nothing particularly suspicious concerning the amount or quantity. When factoring that Store was engaged in rampant FAP trafficking and maintained a modest food inventory,

Respondent's numerous transactions are suspicious, but not definitive evidence of trafficking.

DHS noted that Store happens to be located immediately next to a "super" grocery store. DHS was suspicious that a client would make numerous food purchases from a non-grocery store when a traditional grocery store was just a few steps away. There exists numerous appropriate reasons for explaining Respondent's preference for a smaller or non-traditional grocery store. The DHS point is relevant, but only marginally so.

The case against Respondent primarily rests on Respondent's regular FAP benefit purchases at a Store which profited from FAP benefit trafficking which maintained only a modest food inventory. Though the transactions from Store would reasonably cause suspicion, the evidence does not amount to clear and convincing evidence of trafficking by Respondent. Based on the presented evidence, it is found that DHS failed to establish that Respondent engaged in FAP benefit trafficking. There still 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.

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:


- the court decision;
- the individual's admission;
- documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence.

BAM 720 (8/2012), p. 7.

Without establishment of FAP benefit trafficking against Respondent, there can be no finding of benefit over-issuance to Respondent. Accordingly, DHS is denied from pursuing debt collection actions against Respondent as it relates to FAP benefit trafficking for the period of 2/2009-11/2011.

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 IPV and debt collection requests by DHS are DENIED/ REVERSED.


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

Date Signed: January 28, 2013

Date Mailed: January 28, 2013

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.

201244747/ CG

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:

