



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 31, 2016
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND
OVERISSUANCE**

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 pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on [REDACTED] from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent with the Office of Inspector General. Respondent did not appear.

ISSUES

The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) based on trafficking of Food Assistance Program (FAP) benefits.

The second issue is whether Respondent received an over-issuance of 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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. From [REDACTED], through [REDACTED], Respondent was incarcerated.

3. During Respondent's incarceration, [REDACTED] from Respondent's electronic benefit transfer (EBT) card was spent.
4. Respondent was not involved in the trafficking of FAP benefits.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed a 2nd IPV by trafficking [REDACTED] in FAP benefits from [REDACTED] through [REDACTED].

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 to establish Respondent committed an IPV. [MDHHS] may request a hearing to... establish an intentional program violation and disqualification... [or to] establish a collectable debt on closed cases. BAM 600 (October 2015), p. 4.

MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 4-5) dated [REDACTED]. The repay agreement and MDHHS testimony alleged Respondent committed an IPV by trafficking [REDACTED] in FAP benefits over the period from [REDACTED], through [REDACTED].

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).

IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (January 2016), p. 1. Trafficking is [established by one of the following]:

- The buying, selling or stealing of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

- Attempting to buy, sell or steal FAP benefits for cash or consideration other than eligible food.

BAM 700 (January 2016), p. 2.

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. *Id.* Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See 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).

MDHHS presented documentation (Exhibit 1, pp. 9-12) from the Offender Tracking Information System (OTIS). OTIS is a known public database of Michigan criminal information. It was noted Respondent was paroled in [REDACTED] and that supervision would continue through [REDACTED]. It was noted Respondent was "Held under custody" beginning [REDACTED].

MDHHS presented an Investigation Report (Exhibit 1, p. 3) completed by the testifying regulation agent. The presented report and testimony indicated Respondent was jailed from [REDACTED], through [REDACTED]. The dates of incarceration were noted to be obtained directly from a staff person of the jail holding Respondent.

MDHHS presented a partial history of Respondent's FAP benefit expenditures (Exhibit 1, pp. 13-14). For the period from [REDACTED], through [REDACTED], [REDACTED] different transactions were documented. The transactions totaled [REDACTED].

MDHHS alleged Respondent must have engaged in FAP trafficking because her EBT card was used during a time she was incarcerated. The allegation of trafficking assumes Respondent provided a person with her EBT card and personal identification number (PIN). Because it is known that Respondent's EBT card was used during a time she was unable to use her card, it is reasonably probable that Respondent provided someone with her EBT card and PIN. It is also theoretically possible that Respondent's card was hijacked; this possibility is lessened after factoring that a hijacker could not successfully purchase food with Respondent's EBT card without Respondent's PIN. Presented evidence sufficiently established that Respondent authorized someone else to use her EBT card.

A finding of FAP benefit trafficking requires more than allowing someone outside of the FAP benefit group to use an EBT card. MDHHS policy requires "cash or consideration" in exchange for use of the FAP benefits. "Consideration" is a legal term generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires MDHHS to establish that Respondent received something of value for use of EBT card.

The IPV Repayment Agreement (Exhibit 1, p. 4) cited a letter allegedly written by Respondent instructing the letter's recipient to sell [REDACTED] in FAP benefits. MDHHS did not present any evidence to support the allegation during the hearing. Due to a lack of evidence, the allegation will be given no consideration.

A client who allows someone to use his or her EBT card might do so without any thought of personal benefit. The allowance could simply be done as a gift. For example, Respondent, knowing that she would have no need for FAP benefits while in jail, could have authorized a friend or family member to use her card until she was released.

Based on presented evidence, it is found that MDHHS failed to establish that Respondent engaged in FAP benefit trafficking. Accordingly, MDHHS may not establish an IPV against Respondent. MDHHS also sought to establish an OI of FAP benefits against Respondent due to FAP benefit trafficking.

An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700 (January 2016), p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *Id.*, pp. 1-2.

The finding that Respondent failed to engage in FAP benefit trafficking precludes a finding of a FAP benefit OI based on trafficking. Accordingly, the request to establish an OI based on FAP benefit trafficking is denied.

A denial of an IPV based on FAP benefit trafficking does not necessarily preclude MDHHS from seeking an IPV against Respondent for a purposeful failure to report incarceration. MDHHS testimony seemed to imply that such a request was desired; presented documentation indicated otherwise.

The presented Intentional Program Violation Repayment Agreement specifically identified an IPV based on trafficking. No reference was made to Respondent's alleged failure to report incarceration. The Hearing Summary (Exhibit 1, p. 1) presented by MDHHS also did not allege a failure by Respondent to report incarceration to MDHHS. If MDHHS sought an IPV or OI based on Respondent's alleged failure to report incarceration, Respondent should have notice of the allegation. In the present case, notice of such an allegation was not provided to Respondent.

The amount of the OI sought by MDHHS also rejects that MDHHS issued ample notice to Respondent. The OI sought by MDHHS was calculated by totaling the EBT transactions that occurred when Respondent was in jail. The alleged OI period was the period Respondent was incarcerated.

If MDHHS sought an IPV based on Respondent's failure to report incarceration, MDHHS would have to calculate the OI based, in part, on when Respondent was expected to report her incarceration to MDHHS. The OI period would be the first month

Respondent's benefits could have been stopped following Respondent's reporting. Such considerations would have resulted in a different OI period and OI amount. MDHHS did not present an alternative OI period or amount. Further, MDHHS did not cite specific policy supporting that Respondent was not entitled to receive FAP benefits while incarcerated.

It is found MDHHS did not seek to establish an OI or IPV based on Respondent's alleged failure to report incarceration to MDHHS. Thus, no analysis can be undertaken to address an IPV or OI based on Respondent's alleged failure to report incarceration.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed her 2nd IPV. The MDHHS request to establish an IPV and overissuance of [REDACTED] from [REDACTED], is **DENIED**.

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]