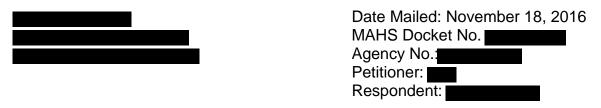
RICK SNYDER GOVERNOR

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

SHELLY EDGERTON



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 from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by regulation agent with the Office of Inspector General. Respondent did not appear.

<u>ISSUE</u>

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

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. Respondent was an ongoing FAP benefit recipient.
- 2. A store (hereinafter "Store") was investigated for trafficking FAP benefits.
- 3. From Respondent made 36 purchases from Store.

- 4. MDHHS alleged 23 of Respondent's purchases from Store involved FAP benefit trafficking based on some combination of the transactions being too large for Store's inventory and for multiple purchases within the same day.
- 5. Respondent did not clearly and convincingly engage in FAP benefit trafficking.

6.	6. On MDHHS r	equested a	hearing to	establish	Respondent
	committed an IPV and is responsib	ole for an ove	erissuance d	of	in allegedly
	trafficked FAP benefits from				•

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 unsigned Intentional	Program Violation Repayment Agreement
(Exhibit 1, pp. 5-6), dated	The repayment agreement (unsigned by
Respondent) and MDHHS testimony allege	ed Respondent trafficked in FAP
benefits from	

[For FAP benefits only, an] 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. <u>Black's Law Dictionary</u> 888 (6th ed. 1990).

MDHHS alleged Respondent trafficked FAP benefits by selling FAP benefits, presumably for cash. The evidence against Respondent was circumstantial. Generally, circumstantial evidence is less persuasive than direct evidence, however, at some point, circumstantial evidence may accumulate to meet the clear and convincing requirement of an IPV. The simplified argument against Respondent is as follows:

- Store was involved in FAP trafficking.
- 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 had suspicious transactions at Store which were indicative of trafficking FAP benefits.
- Therefore, Respondent trafficked FAP benefits.

MDHHS presented various photos (Exhibit 1, pp. 10-13) of the inside of Store. The photos displayed a relatively small canned food area, various snack displays, fruit and vegetable displays (some without any items for sale), an ice cream freezer, two freezers of beverages, and other sale areas which were not readily identifiable. The photos also included a photo of 3 EBT card with papers wrapped around them. Other photos included an overhead look of Store's cash register and various documents. The documents and photos were from FNS and presumably obtained as part of the investigation of Store for FAP benefit trafficking.

MDHHS presented the photographs in an attempt to verify Store's involvement with trafficking. Few certain conclusions can be made from the presented evidence. The presented photographs of the inside of Store were indicative of a store with a relatively small (compared to larger grocery stores) inventory of food items. The presented photos of documents and EBT cards were neither given context nor explanation. The photos provided little insight into whether Store was involved in FAP benefit trafficking.

MDHHS presented a Benchmark: Store FS Trans Stats by Month (Exhibit 1, pp. 14-15). Minimum, maximum, average, and total EBT transaction for "Combination Grocery/Other", "Fruits/Veg Specialty", and "Small Grocery Store" were stated.

MDHHS alleged the report was indicative of fraud because Store's EBT transactions were too frequent and/or large in amounts given the inventory. The report was not clear if the listed transaction summary was for Store's transactions or for stores of a similar size and inventory of Store. For such evidence to be indicative of fraud by Store, some contrast must be established between Store's transactions and those from a store with a comparable food inventory; no such evidence was presented.

MDHHS testimony conceded Store was not yet convicted of FAP benefit trafficking. The absence of charges could be partially due to Store's closing. MDHHS testimony alleged Store closed as a result of the FAP benefit trafficking investigation.

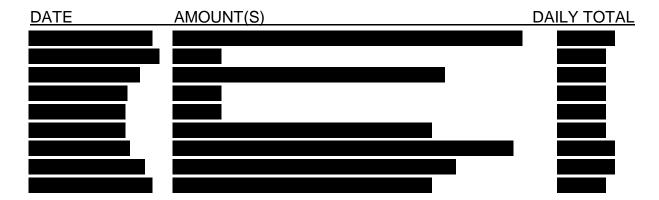
Presented evidence that Store engaged in FAP trafficking was not compelling. Despite the weakness of evidence, MDHHS alleged Respondent's transactions with Store (Exhibit 1, pp. 16-18) was supportive of FAP benefit trafficking.

MDHHS presented Respondent's transaction history from with Store (Exhibit 1, pp. 16-18). The history listed a total of 36 transactions between Respondent and Store. MDHHS alleged 23 transactions involved trafficking. The allegation of FAP benefit trafficking is based on commonly known patterns associated with FAP benefit trafficking.

Generally, smaller stores with a limited food inventory are not likely to have "large" transactions. Similarly, FAP recipients are not likely to make "large" purchases of food from such stores. Though "large" legitimate EBT purchases from stores such as Store are atypical, they are plausible. It is possible that Respondent lacked transportation and was limited to shopping at Store. It is possible that Respondent's food needs were satisfied by Store's inventory.

Multiple transactions within a short period and/or multiple times per day can be indicative of FAP benefit trafficking. Smaller stores engaged in FAP benefit trafficking have learned that large transactions are red flags of trafficking. As a result, smaller stores engaged in benefit trafficking attempt to disguise the trafficking by splitting large trafficking transaction into smaller transactions. Often the FAP benefit trafficking store and client do not bother to separate the transactions in time. Thus, same-day transactions from a store within minutes or hours may be indicative of FAP benefit trafficking. Multiple transactions from the same date can also be explained by a customer simply making legitimate purchases in the same day.

The transactions alleged by MDHHS to be trafficking had some combination of the aforementioned suspicious circumstances. The alleged FAP benefit trafficking transactions are as follows





Respondent testified that she did not engage in FAP benefit trafficking. During the hearing, Respondent was asked why so many of her transactions included multiple same day transactions, including some only minutes apart; Respondent did not offer any convincing explanation for the unusual EBT card usage history.

It cannot be doubted that Respondent's FAP benefit history was suspicious for FAP benefit trafficking. Despite the suspicious expenditure history, there are plausible and benign explanations for the activity. Respondent's inability to proffer an explanation for the unusual EBT expenditures is troubling, however, it is not Respondent's burden to justify her expenditures until MDHHS establishes clearly and convincingly that Respondent trafficked FAP benefits; Respondent's history does not justify finding that MDHHS met the clear and convincing burden.

Based on presented evidence, it is found that Respondent did not engage in FAP benefit trafficking. Accordingly, any corresponding IPV disqualification and/or OI cannot be granted.

DECISION AND ORDER

is DENIED .		
MDHHS request to establish an IPV and overissuand	ce of in FAP benefi	ts from
law, finds that MDHHS failed to establish that Respon	ndent trafficked FAP benefi	ts. The
The administrative law judge, based upon the above	findings of fact and conclus	ions of

CG/hw

Christian Gardocki

Administrative Law Judge for Nick Lyon, Director

Thousan Dordonles

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

DHHS	
Petitioner	
Respondent	