



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: November 18, 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.

ISSUE

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 [REDACTED], 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. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and is responsible for an overissuance of [REDACTED] in allegedly trafficked FAP benefits from [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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6), dated [REDACTED]. The repayment agreement (unsigned by Respondent) and MDHHS testimony alleged Respondent trafficked [REDACTED] in FAP benefits from [REDACTED].

[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. Black's Law Dictionary 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.

[REDACTED]

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

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent trafficked FAP benefits. The MDHHS request to establish an IPV and overissuance of [REDACTED] in FAP benefits 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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]