



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: November 21, 2016
MAHS Docket No.: 16-007909
Agency No.: [REDACTED]
Petitioner: OIG
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 November 3, 2016, 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. From January 2013 through December 2013, Respondent had 24 EBT transactions at a store (hereinafter "Store") involved in FAP trafficking.
3. Of Respondent's EBT transactions at Store, 20 of 24 involved transactions ending in whole or half dollar amounts which totaled [REDACTED].

4. 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.

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 repay agreement and MDHHS testimony alleged Respondent trafficked [REDACTED] in FAP benefits from January 2013 through December 2013.

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).

[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 that Respondent committed an IPV is as follows:

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

MDHHS testimony alleged Store was convicted of FAP trafficking. Generally, a store's involvement in FAP trafficking is verifiable by a letter from FNS stating that the store was permanently disqualified from accepting SNAP program benefits and all appeals were finalized. No such letter was presented. MDHHS presented other evidence supporting Store's involvement in trafficking.

MDHHS presented a Benchmark: Store FS Trans Stats by Month (Exhibit 1, pp. 9-10). Minimum, maximum, average, transaction count, and total transactions for "Fruits/Veg Specialty" were listed for months from January 2011 through September 2013

MDHHS presented a statistical report (Exhibit 1, pp. 12-14) for Store. The report included various information such as the number of transaction that occurred after store hours, transaction amounts close in time, transactions based on the date of month, and transactions based on the day of week. The frequency of transaction amounts were also listed. It is notable that 27.16% of Store's transactions were for either \$100.00, \$150.00, or \$200.00 amounts. It is also notable that 70.12% of Store's transactions were for an even dollar amount.

An overhead photograph of Store (Exhibit 1, p. 15) was presented. The photo included an allegation that "runners" would stand in a parking lot waiting for persons seeking to traffic EBT benefits (presumably at Store).

Generally, an inordinate amount of whole dollar transactions is indicative of FAP benefit trafficking. Unless a store undertakes an unusual price structure (e.g. all food items are rounded to the nearest dime), a whole dollar transaction should occur only about once for every 100 transactions.

The quantity and percentage of whole dollar EBT transactions at Store can only be reasonably explained by involvement in FAP benefit trafficking. It is found MDHHS sufficiently verified Store was involved in FAP benefit trafficking. MDHHS further alleged Respondent was engaged in FAP benefit trafficking at Store.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit 1, pp. 66-67). The presented history ranged from [REDACTED] [REDACTED]. MDHHS alleged 20 of Respondent's 22 transactions at Store involved trafficking. MDHHS alleged the following transaction amounts and dates at Store involved trafficking:

Date	Amount
[REDACTED]	\$230.00
[REDACTED]	\$107.00
[REDACTED]	\$114.00
[REDACTED]	\$138.50
[REDACTED]	\$129.00
[REDACTED]	\$52.00
[REDACTED]	\$98.00
[REDACTED]	\$244.00
[REDACTED] 3	\$68.50
[REDACTED]	\$51.50
[REDACTED]	\$67.00
[REDACTED]	\$35.00
[REDACTED]	\$35.00
[REDACTED]	\$135.00
[REDACTED]	\$129.00
[REDACTED]	\$32.50
[REDACTED]	\$199.50
[REDACTED]	\$73.00
[REDACTED]	\$72.00
[REDACTED]	\$35.00

The probability of Respondent having 20 of 24 transactions at Store for whole dollar amounts is astronomical unless explained by Respondent's FAP benefit trafficking. It is found MDHHS established all of Respondent's EBT transactions involved FAP trafficking.

Of respondent's alleged trafficking EBT transactions, 4 were for half dollar amounts. Consideration was given to finding these 4 transactions were not inherently suspicious because they were not for whole dollar amounts. Exact half dollar amount is just as unlikely to occur as a whole dollar transaction. Having 4 of 24 transactions ending with the same cents is less indicative of trafficking as 20/24 whole dollar transactions, it is still highly improbable. Given Respondent's blatant trafficking at Store, the benefit of any doubt should not be extended to finding that half dollar amounts were not indicative of FAP trafficking. It is found Respondent trafficked [REDACTED] in FAP benefits at Store.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV[, and] lifetime for the third IPV. *Id.*

MDHHS did not allege Respondent previously committed an IPV. Thus, a 1 year IPV disqualification period is justified.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (January 2013), 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.* 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.

It has already been found Respondent trafficked FAP benefits of [REDACTED]. Accordingly, MDHHS established an OI of [REDACTED] in FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on [REDACTED] in FAP benefit trafficking from January 2013 through December 2013. The MDHHS request to establish an overissuance and a 12 month IPV disqualification against Respondent is **APPROVED**.

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]

Petitioner

[REDACTED]

Respondent

[REDACTED]