



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 a grandparent to an ongoing FAP benefit recipient.
2. On [REDACTED] Respondent used his grandson's EBT card for food purchases of [REDACTED] and [REDACTED], respectively.
3. Respondent did not provide cash or consideration for the purchases made with his grandson's EBT card.

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 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. 6-7), dated March 2, 2016. The repay agreement and MDHHS testimony alleged Respondent trafficked \$[REDACTED] in FAP benefits in January 2015.

[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 using his grandson's EBT card. MDHHS provided evidence to support the FAP benefit trafficking allegation.

MDHHS presented a portion of Respondent's grandson's FAP benefit expenditure history (Exhibit 1, pp. 15-18). The history listed a [REDACTED] expenditure on [REDACTED]
[REDACTED]

MDHHS presented security camera photographs (Exhibit 1, pp. 19-20). The regulation agent testified that the images came from a request for security camera footage from the store where Respondent's grandson's FAP benefits were spent on [REDACTED]
[REDACTED]. MDHHS testified the images verify Respondent and his wife (who were interviewed by the testifying agent) using Respondent's grandson's EBT card on [REDACTED]. MDHHS testimony conceded it was Respondent's wife who swiped her grandson's EBT card.

MDHHS presented a list of various food items (Exhibit 1, p. 22) totaling [REDACTED]. Presumably the list of items is what was purchased with Respondent's EBT card on [REDACTED].

MDHHS testimony alleged Respondent's grandson was incarcerated during the alleged trafficking transactions. The allegation was not well supported in the present hearing but was established in a companion IPV hearing against Respondent's grandson (see registration # 16-008294).

Presented evidence sufficiently verified Respondent made a purchase with his grandson's EBT card during a time Respondent's grandson was incarcerated. MDHHS contended this evidence, by itself, establishes FAP benefit trafficking by Respondent. The contention is based on an interpretation that FAP benefit trafficking is established by use of EBT benefits by someone other than the EBT card holder (or authorized representative). MDHHS cited two sources for their contention.

MDHHS, in part, cited federal law. First, the law need not be referenced because the jurisdiction of the present hearing is limited to whether an IPV was established based on MDHHS policy. Federal law may sometimes be cited in administrative hearings as a method of interpreting MDHHS policy when it is unclear. In the present case, no clarification of MDHHS policy is needed.

Secondly, even if federal law was applied, establishment of an IPV requires more than just use of an EBT card by a family member. Federal law does not define FAP trafficking identically to MDHHS, but it is comparable. 7 CFR 271.2 defines trafficking as follows:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and

- signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
 - (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
 - (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
 - (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
 - (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

MDHHS also cited the publication “How to Use Your Michigan Bridge Card” (Exhibit 1, pp. 31-62) as support of the prohibition on transferring EBT benefits. MDHHS testimony indicated all FAP benefit recipients receive a copy of the publication when approved to receive FAP benefits. Among the “DO NOT” actions listed in the publication are using someone else’s food benefits for personal use and giving away a PIN (see Exhibit 1, p. 61).

There are three reasons why statements from the presented publication were not persuasive in establishing the source of FAP trafficking rules. First, BAM and BEM are the source of MDHHS policy, not publications. Secondly, the statements within the publication such as those cited above could be reasonably interpreted as best practices for EBT card holders rather than MDHHS policy. For example, the publication also states, “Keep your last receipt.” Based on MDHHS’ logic, an EBT card holder would break the law by throwing away a receipt after an EBT purchase; this would be a ludicrous outcome. Thirdly, Respondent would not have notice of the rule because he was not alleged to be a FAP benefit recipient who would have received the publication.

It is plausible that Respondent paid some unknown benefit to his grandson for use of his EBT card. Mere use of another’s EBT card is supportive evidence of trafficking; it is not prima facie evidence of trafficking.

MDHHS policy clearly requires “cash or consideration” in exchange for FAP benefits for trafficking to be established. There was no evidence that Respondent provided any benefit to his grandson for use of the EBT card. Based on the familial relationship

between Respondent and the EBT cardholder, it is reasonably possible that no exchange of cash or consideration was given.

The testifying regulation agent indicated she interviewed Respondent, his wife, and his grandchild. The regulation agent testified that Respondent conceded using another person's EBT benefits in exchange for assistance with a utility bill. The agent also testified that Respondent denied using his grandson's EBT card during an interview; presumably the testimony was presented for the purpose of establishing a lie by Respondent. Evidence of a lie by Respondent would affect Respondent's credibility had he testified during the hearing. The lie is not particularly persuasive evidence of cash or consideration in exchange for EBT benefits. These considerations slightly increase the possibility that Respondent would not have had access to his grandson's EBT card without cash or consideration, but not sufficiently so that an IPV is established.

At one point during the hearing, MDHHS contended that the food obtained by Respondent with his grandson's EBT card satisfied the "cash or consideration" requirement for FAP benefit trafficking. The contention is irrational.

It is found that MDHHS failed to establish Respondent engaged in FAP benefit trafficking and the request to establish an IPV is denied. MDHHS also requested a hearing, in part, to establish an OI of FAP benefits related 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.

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 an IPV by FAP benefit trafficking. The MDHHS requests to establish an IPV and overissuance from [REDACTED] in FAP benefits are **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]