



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 30, 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. From [REDACTED], Respondent trafficked [REDACTED] in FAP benefits through multiple EBT expenditures at a store (hereinafter "Store") engaged in FAP benefit trafficking.

3. On [REDACTED] MDHHS requested a hearing to establish Respondent committed a 2nd IPV and is responsible for an overissuance of [REDACTED] in 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 Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 4-5) dated [REDACTED]. The repay agreement (unsigned by Respondent) and MDHHS testimony alleged Respondent trafficked [REDACTED] in FAP benefits from [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).

[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 presented a Search and Seizure Warrant (Exhibit 1, pp. 9-14) signed by a federal judge on [REDACTED]. The warrant authorized various items to be seized from Store as part of an investigation in FAP benefit trafficking.

MDHHS presented an application for a search warrant of Store (Exhibit 1, p. 15). The application was supported by various allegations, which included an affidavit (Exhibit 1, pp. 16-37) by a federal agent. The agent alleged witnessing Store engage in multiple transactions of exchanging cash for EBT benefits across several years. The affidavit also alleged stores comparable to Store and within Store's area averaged [REDACTED] in monthly EBT transactions; Store's EBT transactions averaged [REDACTED] per month from [REDACTED]; the allegation was supported by EBT transaction histories (Exhibit 1, pp. 38-40; 56-69).

Photos of the inside of Store (Exhibit 1, pp. 41-55) were provided; presumably, the photos were obtained as part of the trafficking allegation against Store. Substantial quantities of expired food and several EBT cards were pictured.

The allegations supporting Store's involvement in FAP benefit trafficking were compelling. Presented evidence provided blistering details of Store's involvement in FAP benefit trafficking over a multi-year period.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit 1, pp. 70-71). The presented history ranged from [REDACTED], through [REDACTED]. MDHHS alleged 12 of Respondent's 22 transactions at Store involved trafficking. MDHHS alleged the following transaction amounts and dates at Store involved trafficking:

[illegible]

MDHHS generously limited the alleged trafficking FAP benefit transactions against Respondent to those involving purchases of [REDACTED] or higher. Respondent's other transactions at Store included amounts of [REDACTED] (twice), [REDACTED], [REDACTED], and [REDACTED].

The odds are statistically astronomical that Respondent could have 12 of 22 transactions involving amounts ending in [REDACTED] unless trafficking was involved. The allegation of trafficking is even more probable when factoring the purchases occurred at a Store clearly engaged in FAP benefit trafficking. A finding of trafficking is further supported when factoring that Respondent's transactions at Store were typically for amounts that were more than Respondent's purchases from larger grocery chains (see Exhibit 1, pp. 72-112) who are unlikely to be engaged in FAP benefit trafficking.

All of Respondent's transactions at Store for [REDACTED] are found to involve FAP benefit trafficking. It is found Respondent engaged in FAP benefit trafficking totaling [REDACTED]

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 presented Respondent's IPV history (Exhibit 1, p. 129). A previous IPV from 2014 was listed. The history was sufficient evidence that Respondent committed a 2nd IPV. Thus, a 2 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 a 2nd IPV based on [REDACTED] in FAP benefit trafficking. The MDHHS request to establish an overissuance of [REDACTED] and a 24 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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]