



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: December 19, 2016

MAHS Docket [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.

ISSUES

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

The second issue is whether Respondent received an over-issuance of 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 recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. On [REDACTED], Respondent allowed a third party to use his EBT card resulting in an expenditure of [REDACTED].

3. Respondent did not clearly or convincingly receive cash or consideration for use of his EBT card.
4. On [REDACTED], MDHHS requested a hearing to establish Respondent committed a 1st IPV by trafficking [REDACTED] in 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 Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 6-7) dated [REDACTED]. The repay agreement (unsigned by Respondent) and MDHHS testimony alleged Respondent committed an IPV by trafficking [REDACTED] in FAP benefits in [REDACTED].

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 presented four photographs (Exhibit 1, pp. 11-13). The photos were all date stamped [REDACTED]. The time stamp of the photos indicated they were taken within a 7 minute period. Two of the photographs appeared to show a woman performing self-checkout at a grocery store. Two photographs appeared to show the same woman leaving the grocery store with a shopping cart full of groceries. No other persons appeared to be with the photographed woman when buying or transporting groceries.

MDHHS presented a portion of Respondent's EBT history (Exhibit 1, p. 14). The history listed an EBT transaction dated [REDACTED] for [REDACTED].

MDHHS presented Petitioner's electronically submitted application for FAP benefits (Exhibit 1, pp. 16-46). The application listed a household of only Petitioner.

Presented evidence indicated Respondent allowed an unknown person to access his EBT benefits on [REDACTED]. MDHHS testimony indicated Respondent was subsequently contacted about the allowance. The testifying regulation agent stated Respondent conceded he allowed the usage.

MDHHS contended that Respondent's allowance to a third party the use of his EBT card, by itself, is FAP benefit trafficking. The MDHHS contention is not supported by MDHHS policy.

A finding of FAP benefit trafficking requires more than allowing someone outside of the FAP benefit group to use an EBT card. MDHHS policy requires "cash or consideration" in exchange for use of the FAP benefits. "Consideration" is a legal term generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires MDHHS to establish that Respondent received something of value for use of EBT card; no such allegation was made.

A client who allows someone to use his or her EBT card might do so without any thought of personal benefit. The allowance could simply be done as a gift; a gift is not performed for cash or consideration. MDHHS testimony conceded Respondent expressed just such an altruistic motive for allowing the EBT card usage. Despite, Respondent's statement, MDHHS contended EBT card rules justify a finding that Respondent trafficked FAP benefits.

MDHHS presented a publication titled How to Use Your Michigan Bridge Card (Exhibit 1, pp. 47-62). 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. 91). There are two reasons why statements from the presented publication were not persuasive in establishing FAP trafficking.

First, 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 violate policy by throwing away a receipt after an EBT purchase; this would be a ludicrous outcome.

Secondly, and more importantly, BAM and BEM are the source of MDHHS policy, not publications. Neither BAM nor BEM are known to state that use of an EBT card by a person outside of the FAP group, by itself, is benefit trafficking.

It is found use of an EBT card by someone outside of the FAP benefit group does not definitively establish trafficking. Though trafficking is not definitively established, the usage can be considered in determining if cash or consideration was given for the usage.

Respondent gave away [REDACTED] of the [REDACTED] monthly FAP benefits issued to him by MDHHS. It is theoretically possible that Respondent was generous enough to give away 89% of a month’s worth of FAP benefits. It is also very possible that Respondent lied when he reported gifting the benefits, and only did so in exchange for cash and/or consideration.

MDHHS testified that Respondent stated the woman to which he gave EBT benefits was in need. During the hearing, MDHHS reasonably questioned why someone would be in need of EBT benefits when they could presumably be eligible for the benefits themselves. It is possible that a person could be in need of EBT benefits despite the FAP benefit program. It is also possible that Respondent lied about the motive for allowing another to use his EBT card.

MDHHS showed valid reason to be skeptical of Respondent’s motive in allowing use of his EBT card. Though MDHHS’ skepticism was justified, it cannot be stated that MDHHS clearly and convincingly established Respondent received cash or consideration in exchange for EBT benefits. Accordingly, it is found MDHHS failed to establish FAP benefit trafficking by Respondent. MDHHS also sought to establish an OI of FAP benefits against Respondent due 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 trafficking FAP benefits. It is further found that MDHHS failed to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED]. The request to establish an IPV and OI 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]