



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: January 26, 2017
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, an in-person 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 appeared and was unrepresented. [REDACTED] of [REDACTED] testified on behalf of Respondent.

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 MDHHS established that Respondent received an overissuance (OI) of FAP benefits due to trafficking.

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] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Respondent had 78 EBT transactions at a store (hereinafter "Store") involved in FAP trafficking.
3. Of Respondent's EBT transactions at Store, multiple transactions involved multiple same day transactions, transactions seconds-to-minutes apart, transactions ending in same cents value, and/or were excessively large given Store's food inventory.
4. Respondent trafficked [REDACTED] in EBT benefits at Store.
5. 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 [REDACTED] through [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 documents from Food and Nutrition Services (Exhibit 1, pp. 10-12) allegedly used in the investigation against Store. It was noted Store did not use an optical scanner. It was noted there were not shopping carts available for customers. It was noted that the Store maintained less than 10 shopping baskets for their customers. An inventory list of Store items noted Store had the following items in greater than 20 units: ice cream/milk, juice, beans, breads and cereals, canned meat, and fish. The presented inventory was consistent with various photographs of Store (see Exhibit 1, pp. 17-24).

MDHHS presented a letter from FNS to Store (Exhibit 1, pp. 25-27) dated [REDACTED]. The letter stated Store was charged with trafficking. The stated basis for the charge was FAP trafficking transactions suspicious in nature because of an excessive number of transactions ending in the same cents value, processed too rapidly in time, and being excessively large.

[REDACTED]

Respondent's frequent transactions at a store verified to have trafficked in FAP benefits is suspicious of FAP trafficking. Given Store's relatively small food inventory, Respondent's purchases from Store exceeding [REDACTED] are suspicious of trafficking. Multiple purchases in a day is further indication of FAP trafficking. Respondent's transactions being seconds apart is further indicative of FAP trafficking. The inordinate number of transactions ending in \$.99 value and approaching [REDACTED] is also indicative of FAP trafficking.

Respondent testified he was assaulted by a group of teenagers in [REDACTED]. Respondent testified he ended up hospitalized for his injuries, spending time in a mental hospital, and lived in foster care for the next few months. Respondent testimony estimated he returned to independent living between [REDACTED] and [REDACTED]. Respondent testified he is unaware of what happened to his EBT card after he was assaulted.

Respondent seemed to contend he had no motive to traffic FAP benefits because he lived in group facilities which fed him. The contention was unpersuasive as persons who sell FAP benefits to stores typically receive monies. Thus, Respondent could have had a motive for trafficking FAP benefits while residing in a group facility.

Respondent seemed to contend he could not possibly have trafficked FAP benefits because of his residency in group facilities. Respondent's testimony conceded he was able to leave his group home when he wanted. Thus, Respondent appears to have had the ability to traffic FAP benefits.

Respondent testified he could not have trafficked FAP benefits because he did not have his EBT card at the time. MDHHS verified part of Respondent's statement was inaccurate.

MDHHS verified Respondent had the same EBT card since [REDACTED]. Three of Respondent's alleged transactions occurred since Respondent received the EBT card that he still uses. Respondent's transactions on [REDACTED], were for identical

amounts (which is highly improbable), occurred within the same minute (which is highly improbable), for a total amount which would be improbable given Store's inventory. Respondent had no excuse to justify the transactions from [REDACTED].

An EBT card cannot be used without use of a personal identification number (PIN) known only to the card holder. If Respondent did not personally use his EBT card, it is reasonably possible that Respondent gave a friend or family member his EBT card and PIN. As the card holder, Respondent would be responsible for any misuse of his EBT card stemming from voluntary relinquishment of his EBT card.

Each of Respondent's suspicious transactions could theoretically be explained by a non-trafficking reason. Respondent's transactions were simply too numerous and suspicious to be justified by a non-trafficking reason.

Of Respondent's transactions with Store, 16 of 78 transactions ended in [REDACTED] values. Generally, an inordinate amount of transactions ending in the same cents value is highly 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 transaction ending in [REDACTED] should occur only about once for every 100 transactions.

The quantity and percentage of Respondent's suspicious EBT transactions at Store can only be reasonably explained by involvement in FAP benefit trafficking. It is found Respondent trafficked FAP benefits 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 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 [REDACTED]. 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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]