



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 9, 2017
MAHS Docket No.: 16-012497
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 December 19, 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.

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], two purchases were made from a store (hereinafter "Store") using Respondent's EBT card.
3. The second of the purchases was for [REDACTED].
4. Respondent did not clearly or convincingly receive cash or consideration in exchange for the [REDACTED] transaction.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed a 1st IPV by trafficking [REDACTED] in FAP benefits from May 2015.

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 [REDACTED]. The repay agreement and MDHHS testimony alleged Respondent committed an IPV by trafficking [REDACTED] in FAP benefits in May 2015.

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 a document (Exhibit 1, p. 11) listing EBT card information for Respondent. The document included Respondent's name, address, and last four numbers of Respondent's EBT card.

MDHHS presented a portion of Respondent's EBT expenditure history (Exhibit 1, p. 12). Two transactions from Store were listed for [REDACTED]. The first transaction was for [REDACTED] which occurred at 4:36 p.m. A second transaction occurred at 4:49 p.m. was for [REDACTED].

MDHHS presented a publication titled How to Use Your Michigan Bridge Card (Exhibit 1, pp. 13-28). 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.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 29-34). Respondent's signature was dated [REDACTED]. Respondent listed she lived with her 3 minor children and living-together partner. Respondent did not list her mother-in-law as a household member, but listed her as someone who claimed Respondent's children as dependents.

MDHHS presented an Incident/Investigation Report (Exhibit 1, pp. 37-50). The report included a Reporting Officer Narrative (Exhibit 1, pp. 40-41) of an incident between Respondent and Store on [REDACTED]. Store employees detained Respondent after she passed a final point of sale with 2 baby bottle cleaning sets and shaving razors in her purse. The report, in part, stated the following:

[REDACTED] indicated... she set the three items "on" her purse and that she forgot to take them out. [REDACTED] indicated she went to the register and paid for other items and went to take her card (Bridge card) to her mother-in-law. [REDACTED] then stated that she was then stopped by a cashier and questioned about the stolen items. [New paragraph] [REDACTED] stated that she wanted to give her Bridge Card to her mother in law to buy some of her mother in laws food that she was purchasing. [REDACTED] was asked if she was allowed to do that with her Bridge Card, to which she advised that her case worker knows that she does it and that her mother in law pays for some of her rent and that they all live in the same house so it was a known fact that she used her Bridge Card to pay for her mother in laws food sometimes.

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 in exchange for EBT benefits.

Setting aside the hearsay obstacles, the presented police report documented Respondent’s exchange of EBT benefits to her mother-in-law in exchange for rent. Such a transaction is FAP benefit trafficking. The confession to FAP benefit trafficking is essentially meaningless unless a specific transaction associated with FAP benefit trafficking is verified. MDHHS alleged the police report included documentation of such verification.

A receipt from Store (Exhibit 1, pp. 47-48) dated [REDACTED], was presented. Payment of [REDACTED] in “food stamp” benefits was noted. Respondent’s name was handwritten on the document.

A receipt from Store (Exhibit 1, p. 47) dated [REDACTED], was presented. Respondent’s mother-in-law’s name was handwritten on the document. Payment of [REDACTED] in “food stamp” benefits was noted.

MDHHS testimony contended the handwriting of Respondent’s mother-in-law’s name on the receipt documenting a [REDACTED] EBT purchase verifies Respondent’s mother-in-law’s use of Respondent’s EBT card. The MDHHS contention is dubious.

Simply writing a name on a receipt is not conclusive proof of what person made the purchase. It is not known who wrote Respondent’s mother-in-law’s name on the receipt. It is not known why Respondent’s mother-in-law’s name was written on the receipt. The police report narrative referenced neither of Respondent’s EBT transactions with Store nor whether Respondent’s mother-in-law performed the transaction. These evidentiary deficiencies create less than clear and convincing proof that Respondent trafficked FAP benefits for [REDACTED].

It is found MDHHS failed to establish Respondent trafficked FAP benefits. The analysis will proceed to determine if an OI was established.

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 May 2015. 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]