

3. During Respondent's incarceration, \$ [REDACTED] in FAP benefits from Respondent's electronic benefit transfer (EBT) card was spent.
4. MDHHS did not establish that Respondent was involved in the trafficking of FAP benefits.
5. On [REDACTED] [REDACTED] [REDACTED], MDHHS requested a hearing to establish Respondent committed an 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, in part, 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. 4-5) dated [REDACTED]. The document, along with MDHHS testimony, alleged Respondent committed an IPV by trafficking \$ [REDACTED] in FAP benefits from [REDACTED].

[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 presented a thread of 2 emails (Exhibit 1, pp. 9-10). An email dated [REDACTED] [REDACTED] was sent by the testifying agent to an "administrative assistant" with a county sheriff's department. The email included Respondent's alleged date of birth and booking date of [REDACTED]. A request for information was not apparent. A responsive email dated [REDACTED], indicated Respondent was sentenced on [REDACTED] and released on [REDACTED].

MDHHS testimony alleged that Respondent was incarcerated from the booking date to the above-stated release date. For purposes of this decision, it will be assumed that Respondent's dates of incarceration were as stated by MDHHS.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 11-12) from [REDACTED], through [REDACTED], was presented. Various transactions appearing to total [REDACTED] were listed.

MDHHS presented FAP issuance history (Exhibit 1, p. 13) from [REDACTED] [REDACTED]. The history listed an issuance of \$ [REDACTED] for each benefit month.

MDHHS presented the 9th page from an Assistance Application (Exhibit 1, p. 16). It was stated that clients must report changes to their MDHHS specialist within 10 days among a list of "Things You Must Do".

MDHHS alleged Respondent must have engaged in FAP trafficking because Respondent's EBT card was used during a time Respondent was incarcerated. The trafficking allegation assumes Respondent provided someone with his EBT card and personal identification number (PIN). Because Respondent's EBT card was used during a time when Respondent could not have personally used the card, it is reasonably probable that Respondent provided someone with his EBT card and PIN. It is possible that Respondent's EBT card was hijacked; this possibility is lessened after factoring that a hijacker could not successfully purchase food with Respondent's EBT card without Respondent's PIN. Presented evidence sufficiently established that Respondent authorized someone else to use his EBT card.

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. For example, Respondent could have gifted benefits to a friend or family member knowing he would have no use for FAP benefits while incarcerated. It is also possible that Respondent authorized someone to make purchases on his behalf.

The use of an EBT card by a person outside of Respondent's FAP benefit group, by itself, is not direct evidence of FAP benefit trafficking. The evidence can be used to circumstantially establish that Respondent received cash or consideration in exchange for the EBT card's usage. No other presented evidence was particularly indicative that Respondent received cash or consideration in exchange for the purchases made with his EBT card.

MDHHS implicitly contended persons receiving FAP benefits are prohibited from giving away FAP benefits. MDHHS cited two sources for their contention.

MDHHS presented various federal regulations (Exhibit 1, p. 33) in an attempt to verify that federal law prohibits allowing persons outside of a benefit group from using an EBT card. The jurisdiction of the present hearing is limited to whether an IPV was established based on MDHHS policy, not federal law. 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 is needed.

Secondly, even if federal law was relevant, it is functionally identical to MDHHS policy; like MDHHS policy, trafficking requires an exchange of cash or consideration. 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. 17-32) in support of the prohibition on transferring EBT benefits. MDHHS has previously alleged that 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. 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.

Based on presented evidence, it is found that MDHHS failed to establish that Respondent engaged in FAP benefit trafficking. Accordingly, MDHHS may not establish an IPV against Respondent. MDHHS also sought to establish an OI of FAP benefits against Respondent due to FAP benefit trafficking.

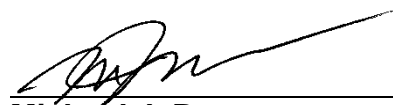
An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700 (January 2016), p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *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]. [REDACTED] The request to establish an IPV and OI is **DENIED**.

CG for MJB/jaf



Michael J. Bennane
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]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]