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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: May 15, 2017  
MAHS Docket No.: 16-014493  
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 [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) by trafficking Food Assistance Program (FAP) benefits.

The second issue is whether MDHHS established Respondent received an overissuance of 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. A store (hereinafter "Store") was found guilty of FAP benefit trafficking through a federal administrative process.

3. From [REDACTED], Respondent had 14 EBT purchases from Store which exceeded [REDACTED] - the total transaction amounts being [REDACTED]
4. Respondent's purchases clearly and convincingly involved EBT benefit trafficking.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and is responsible for an overissuance of [REDACTED] in FAP benefits allegedly trafficked 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. 8-9), dated [REDACTED]. The document and MDHHS testimony alleged Respondent trafficked [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 alleged Respondent trafficked FAP benefits by exchanging FAP benefits for cash and/or non-EBT eligible items. The evidence against Respondent was circumstantial. Generally, circumstantial evidence is less persuasive than direct evidence, however, at some point, the evidence may accumulate to meet the clear and convincing requirement of an IPV. The simplified argument against Respondent is as follows:

- Store was involved in FAP trafficking.
- Store has a limited supply of food where it is unlikely that someone would make regular and/or large purchases of food.
- 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 letter to Store from the United States Department of Agriculture (USDA) Food Nutrition Service (Exhibit 1, pp. 15-16). The letter was dated [REDACTED]. The letter informed Store of a 5-year disqualification from accepting EBT benefits based on a finding that Store trafficked FAP benefits.

MDHHS presented various photos of Store (Exhibit 1, pp. 24-28). The photos showed Store was a gas station with additional items available for purchase. Photographs appeared to show Store sold various items which are presumably purchasable with EBT benefits; such items included beverages (Store had several freezers), candy, snack items (e.g. potato chips, beef jerky...), and gum. Other photographed items for sale included sunglasses, various pills, cigarettes, and auto supplies.

MDHHS presented a summary of the Michigan State Police investigation against Store for FAP benefit trafficking (Exhibit 1, pp. 29-33). The investigation summary included interview summaries with Store's owner, Store's owner's brother (who was also an employee of Store), and various patrons of Store who allegedly trafficked FAP benefits. The summary noted Store's owner and an employee confessed to exchanging EBT benefits for cash and items ineligible for EBT purchase.

MDHHS presented a list of EBT transactions from Store (Exhibit 1, pp. 18-22) as part of an undercover operation. The list included 61 transactions occurring from [REDACTED].

MDHHS presented various monthly reports of EBT purchases (Exhibit 1, pp. 47-53) for stores similar in size to Store and within Store's geographical area. It was notable that in [REDACTED], Store's average EBT transaction was [REDACTED]; among the 12 other stores listed, the next highest average EBT transaction was [REDACTED]. Similarly, Store's average

EBT transaction in [REDACTED]; the second highest average EBT transaction for other listed stores was [REDACTED].

MDHHS presented various reports of Store's EBT history (Exhibit 1, pp. 54-56). The reports included a breakdown of EBT transaction amounts. It was notable that Store's highest EBT transaction in [REDACTED].

MDHHS sufficiently verified Store's involvement with FAP benefit trafficking. Based on Respondent's history with Store, MDHHS alleged Respondent engaged in FAP benefit trafficking.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit 1, p. 63). The history listed a total of 14 transactions between Respondent and Store. MDHHS alleged 11 of Respondent's transactions with Store involved FAP trafficking. All alleged trafficking transactions exceeded \$50. The transactions by Respondent at Store alleged to be trafficking are as follows:

<u>DATE</u>	<u>AMOUNT</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

MDHHS inferred that EBT transactions with Store exceeding \$50 involved FAP benefit trafficking. The inference has some logic.

Generally, persons do not make legitimate EBT purchases exceeding \$50 from gas station marts. This generalization is based partially on such stores generally charging a premium for items, compared to larger stores. It is also atypical for persons to need \$50 or more in food items typically sold at gas station marts (e.g. chips, candy, pop...). Some gas station marts may offer more traditional grocery items (e.g. meats, fruits, vegetables...), though photographs of Store were not indicative that Store had such items for sale. The consideration justifies a suspicion of FAP benefit trafficking, but it cannot be found that any EBT transaction at Store exceeding \$50 convincingly involved FAP trafficking.

Given presented evidence, there is no particular EBT transaction amount that could be stated to definitively establish FAP benefit trafficking. Though such a line cannot be

drawn with certainty, inferences can be made based on Respondent's history with Store.

Of Respondent's EBT transactions with Store, 9 exceeded [REDACTED]. Of Respondent's transactions with Store, 4 were within the range from [REDACTED].

It would be atypical for someone to purchase more than [REDACTED] of legitimate food items from a store with a limited food inventory. When factoring that the particular store was convincingly involved in trafficking FAP benefits, the possibility of legitimate EBT transactions exceeding [REDACTED] is dwindled. When factoring that Respondent's transactions regularly exceeded [REDACTED] (including 4 which were within a dollar of [REDACTED]), the probability of any of Respondent's transactions with Store exceeding [REDACTED] to be for legitimate purchases is absurdly low. It is found that MDHHS established that Respondent trafficked [REDACTED] in FAP benefits.

The standard [IPV] 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. The analysis will proceed to determine if an OI was established.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2. 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 that Respondent trafficked [REDACTED] in FAP benefits. The finding justifies establishment of an OI of [REDACTED].

### **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 FAP benefit trafficking from [REDACTED]. It is further found that MDHHS established an OI of [REDACTED] against Respondent. The MDHHS request to establish an overissuance and a 1-year disqualification against Respondent is **APPROVED**.

CG/hw



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**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]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]