



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: May 3, 2017
MAHS Docket No.: 16-016333
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 March 28, 2017, 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 May 2012 through July 2013, Respondent made 10 EBT purchases from Store which totaled \$ [REDACTED].
4. Respondent's purchases did not clearly and convincingly involve 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 allegedly trafficked FAP benefits from May 2012 through July 2013.

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 May 2012 through July 2013.

[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. 30-34). 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. Additional interview summaries with Store's customers who were alleged to have trafficked FAP benefits (Exhibit 1, pp. 36-45) were included.

MDHHS presented a list of alleged FAP trafficking transactions from Store (Exhibit 1, pp. 18-22) as part of the undercover investigation. The list included 61 transactions occurring from [REDACTED].

MDHHS presented various monthly reports of EBT purchases (Exhibit 1, pp. 47-53) for stores similar size to Store in Store's area. It was notable that in January 2013, Store's

It is acknowledged that transactions under \$50 could have involved FAP trafficking. The investigation against Store verified a history of trading EBT benefits for cigarettes and gas. It is plausible that transactions exceeding even \$20 could have involved trafficking of benefits.

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.

Only 2 of Respondent's transactions exceeded \$50. Only 1 of Respondent's transactions exceeded \$100. It is not commonplace for persons to make such EBT purchases from gas station marts, but it is theoretically possible. No evidence suggested that such transactions could not easily be supported by the gas station mart's inventory. The transactions are acknowledged to be suspicious, however, based on the amounts, they are not found to be clearly and convincingly evidence of trafficking.

It is notable that of Respondent's 26 transactions at Store, 9 involved transactions ending in \$.98 (3 of the transactions were not alleged to be trafficking). A statistical probability of having 9 of 26 transactions ending in a certain amount was not provided. As a point of reference, MDHHS presented Respondent's entire EBT expenditure history over the alleged OI period. Respondent performed approximately 358 transactions during the alleged OI period. Of the approximate EBT transactions 332 transactions not at Store, 8 involved amounts ending in \$.98. Though 9 of 26 transactions ending in \$.98 at Store could be explained by trafficking, it is possible that the history is simply based on coincidence.

Respondent's food purchases at Store are undeniably suspicious for FAP benefit trafficking. Though trafficking is a very reasonable explanation of Respondent's atypical purchases, it cannot be stated that Respondent clearly and convincingly trafficked FAP benefits. Accordingly, the request to establish an IPV is denied.

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 presented evidence did not clearly and convincingly establish that Respondent trafficked FAP benefits. A finding of OI related to trafficking cannot follow a finding that an IPV related to trafficking did not occur.

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 trafficked FAP benefits. The MDHHS request to establish an IPV and overissuance of \$ [REDACTED] in FAP benefits 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]