



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.: 16-019238  
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 appeared and was unrepresented.

**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 April 2013 through September 2013, Respondent made 6 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 April 2013 through September 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 April 2013 through September 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 transactions from Store (Exhibit 1, pp. 18-22) that were made as part of the undercover investigation against Store. 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 average EBT transaction was \$23.97; among the 12 other stores listed, the next highest average EBT transaction was \$8.97. Similarly, Store's average EBT transaction in April 2014 was \$20.24; the second highest average EBT transaction for other listed stores was \$9.05.

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 January 2013 was for \$644.53.

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. 61). The history listed a total of 13 transactions between Respondent and Store. MDHHS alleged that Respondent's transactions (or daily combined transactions) with Store exceeding \$31 involved FAP trafficking. The following 5 transactions were alleged to be trafficking:

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

MDHHS presented Respondent's full EBT history from the alleged OI period (Exhibit 1, pp. 63-65). The history verified Respondent often shortly followed purchases at Store with large purchases from a grocery store. For example, Respondent's purchases at a grocery store included the following transactions: \$ [REDACTED] on [REDACTED], \$ [REDACTED] on [REDACTED], \$ [REDACTED] on [REDACTED] and \$ [REDACTED] on [REDACTED]. MDHHS alleged same-day purchases at a grocery store would not likely accompany unusually large purchases from a gas station mart unless the gas station mart transactions involved trafficking.

Respondent testified that she was pregnant throughout the OI period and that her cousin performed the shopping for her. Respondent's testimony implied that her cousin

committed fraud without Respondent's knowledge. Respondent's testimony was dubious.

Even if it was certain that Respondent did not personally complete any of the transactions Respondent authorized her cousin's use of the card. If Respondent's cousin had stolen some of Respondent's EBT benefits, Respondent would have surely noticed and ended the supposed fraud before it reached hundreds of dollars.

Though Respondent's testimony was dubious, Respondent's pattern of shopping is not found to be particularly insightful evidence of trafficking. It would be unusual for persons to legitimately buy food from a gas station on the same date the person bought large amounts of groceries. It is possible that the gas station mart offered better prices on some items. It is possible that the gas station mart was a convenient location to buy items forgotten at the grocery store. Several other non-trafficking explanations exist. Such explanations would have been more convincing had they been made by Respondent, however, the burden of establishing fraud rests with MDHHS, not clients. It is also appreciated that the alleged fraudulent transactions occurred approximately 4 years before the hearing. Thus, it is reasonable that persons may not have explanations of shopping preferences from 4 years earlier.

The most persuasive evidence of FAP trafficking was Respondent's EBT transaction at Store for \$ [REDACTED]. Generally, persons do not make legitimate EBT purchases exceeding \$150 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 \$150 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.

Though Respondent's EBT transaction history at a store involved in FAP trafficking was highly suspicious for trafficking, presented evidence is not deemed to be clear and convincing evidence of trafficking. It is found MDHHS did not establish Respondent committed an IPV. 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 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



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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]