



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: June 9, 2017
MAHS Docket No.: 16-017387
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 May 11, 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, and [REDACTED], hearing coordinator. 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 August 2010 through April 2011, Respondent had 11 EBT purchases from Store totaling [REDACTED].
4. Respondent's purchases from Store 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 allegedly trafficked FAP benefits.
6. Respondent has no previous history of IPV's.

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. 6-7), dated [REDACTED]. The document and MDHHS testimony alleged Respondent trafficked \$ [REDACTED] in FAP benefits from August 2010 through April 2011.

[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 an Operation Plan for Search Warrant (Exhibit 1, p. 11). The document indicated a plan to search Store on [REDACTED], related to allegations of trafficking FAP benefits.

MDHHS presented a report of Store's EBT usage history (Exhibit 1, p. 12). The report listed EBT transaction averages, maximums, and total from January 2010 to September 2012. Store's highest EBT transaction in various months included amounts of \$200.00, \$155.00, \$420.00, \$350.00, \$790.00, \$400.00, \$430.00, \$498.00, and \$240.00

Various monthly EBT transaction reports for Store and other "medium grocery stores" in Stores area (Exhibit 1, (pp. 13-27) were presented. Generally, the report tended to show Store's EBT usage was comparable to other stores in its area.

MDHHS presented various photographs of Store (Exhibit 1, pp. 28-48). Various items such as pop, ice cream, and snack items were pictures. Photos of baby food, sugar, and canned goods, included items that were allegedly expired.

MDHHS presented a document (Exhibit 1, p. 49) purportedly from FNS. The document indicated Store was "PDQ'd" on [REDACTED]. MDHHS testimony indicated the acronym referred to a permanent disqualification of Store's ability to accept EBT benefits.

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

MDHHS presented Respondent's FAP issuance history (Exhibit 1, pp. 51-52). The history listed issuances of \$ [REDACTED] for each benefit month from August 2010 through April 2011.

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

DATE	AMOUNT
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
TOTAL	[REDACTED]

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.

Generally, persons do not make legitimate EBT purchases exceeding \$50 from "medium grocery stores." 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 such stores (e.g. chips, candy, pop...). Some stores 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.

A regulation agent testified that she participated in the investigation of Store. The regulation agent testified that she observed Store to have excessive items of expired food. Expired food is often seen in stores engaged in FAP benefit trafficking as the food is often used for an appearance of a grocery store rather than an item expected to be purchased.

A regulation agent testified that Store happened to have no counter area to line up multiple food items. The agent further testified that Store did not have shopping carts thereby making any large purchases to be difficult.

Respondent testified that his EBT usage is understandable when factoring his circumstances. Respondent testified that he was released from prison and required to wear a tether. Respondent testified that Store happened to be the only store in his area that he could attend while staying within the range of his tether; as a result, Respondent claimed he often had to make large purchases from Store. Respondent testified he made his purchases by bringing items to the sales counter and leaving them until he was done shopping. Respondent testified that he was able to carry the purchased items home in a short distance walk carrying several grocery bags.

From August 2010 through April 2011, Respondent received a total of \$ [REDACTED] in FAP benefits. Given Respondent's issuance history, it can be deduced that Respondent spent over \$ [REDACTED] in FAP benefits away from Store. Respondent's testimony did not clarify how he was able to spend some of his FAP benefits at other stores.

If Store was the only food store in Respondent's walking area, it would be expected that Respondent would have made some small purchases from Store. As it happened, of Respondent's 11 EBT transactions, none were for less than \$20, and only 1 was for less than \$45. When asked why he hadn't made smaller purchases, Respondent implied that he was well-prepared on his large shopping trips and had little need to return to Store for smaller purchases.

The most compelling evidence of trafficking concerned the amounts of FAP transactions. 10 of Respondent's 11 transactions with Store were for even dollar amounts. The statistical probability of having items equal even dollar amounts is unknown, but it is presumed to be astronomically unnatural. It is known that stores engaged in benefit trafficking will sometimes poorly disguise trafficking by using even dollar amounts when processing fraudulent EBT transactions.

Respondent testimony expressed surprise at the amount of even dollar amounts in his dealings with Store. Respondent suggested that Store's pricing may have led to even dollar amounts or that perhaps Store simply rounded purchases to the nearest dollar.

It would be atypical for someone to purchase more than \$50 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 \$50 is dwindled. When factoring that Respondent's transactions regularly exceeded \$100 the probability of any of Respondent's transactions with Store to be for legitimate purchases is very low. When factoring that 10 of Respondent's 11 transactions with Store were for even dollar amounts, the possibility of non-trafficking is clearly and convincingly improbable. 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 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 August 2010 through April 2011. 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



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]