



RICK SNYDER
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: June 28, 2017

MAHS Docket No.: [REDACTED]

Agency No.: [REDACTED]

Petitioner: [REDACTED]

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 over-issuance (OI) 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 allegedly involved in FAP trafficking.

3. From [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Respondent had 12 EBT purchases from Store totaling over [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. 6-7), 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 testimony alleged that Store was one of 9 stores within a small geographical area involved in trafficking FAP benefits. MDHHS testimony alleged all 9 stores were raided on the same date.

MDHHS alleged the 9 stores trafficked FAP benefits, in part, by using “runners.” The runners allegedly met customers in a parking lot near all 9 of the stores allegedly involved in FAP trafficking. The runners allegedly processed the EBT transactions at the stores while persons willing to traffic FAP benefits waited inside of their vehicle.

MDHHS presented a letter from the United States Department of Agriculture (USDA) Food Nutrition Service to an apparent owner of a grocery store (Exhibit 1, pp. 15-16). The letter was dated [REDACTED]. The letter informed an owner of a store that he was “permanently disqualified” from accepting EBT benefits based on a finding that Store trafficked FAP benefits. The letter was addressed to the owner of a store which did not have the listed name of Store.

MDHHS presented various photos (Exhibit 1, pp. 18-21). The photos showed photographs of alleged runners, the inside of unknown stores, the outside of two stores (neither of which was the store where MDHHS alleged Respondent trafficked FAP benefits).

MDHHS presented an overhead photograph (Exhibit 1, p. 24) of the area covering some or all of the 9 stores involved in trafficking FAP benefits. The photograph allegedly showed the parking lot where runners met customers and Store which was approximately one block away.

MDHHS presented a report (Exhibit 1, pp. 22-23) showing a store's EBT history for calendar months from [REDACTED]. The report was for a store that was not Store. Over the entire period of the report, the store's average EBT transaction amount was [REDACTED]. The store's highest EBT transaction amounts included [REDACTED].

Much of the presented evidence attempting to establish Store was involved in FAP trafficking was not even specific to Store. Though the evidence against Store was lackluster, MDHHS also presented evidence of trafficking that was specific to Respondent.

MDHHS presented Respondent's FAP issuance history (Exhibit 1, pp. 13-15). Various FAP benefit issuances from [REDACTED] were listed

MDHHS presented Respondent's EBT history (Exhibit 1, pp. 25-32). The history ranged from [REDACTED].

MDHHS presented Respondent's EBT transaction history with Store (Exhibit 1, p. 33). The history listed a total of 12 transactions between Respondent and Store; the transactions totaled [REDACTED]. MDHHS alleged all of Respondent's transactions with Store involved FAP trafficking. The transactions by Respondent at Store alleged to be trafficking are as follows:

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

Generally, persons who sell EBT benefits do so for even dollar amounts (\$50, \$100, \$250...). Generally, stores who buy EBT benefits pay [REDACTED] for each dollar trafficked. A store not bothering to disguise FAP trafficking transactions will process the transaction for exactly [REDACTED] of the amount trafficked. Thus, stores and persons not bothering to disguise FAP trafficking will often have even dollar transaction amounts.

Of Respondent's 12 transactions with Store, 11 happened to be for even dollar amounts. Of Respondent's transactions with Store, 9 happened to be for an exact

multiple of [REDACTED]. A probability of such transactions naturally occurring is not known with certainty, but it is presumed to be virtually impossible.

The one transaction between Respondent and Store for a non-even dollar amount occurred on [REDACTED]. In total, Respondent spent [REDACTED] in FAP benefits at Store on that date. Respondent had no other transactions in his EBT history approaching such high dollar numbers.

Generally, trafficking cannot be inferred exclusively from a person's EBT expenditure history. Respondent's transaction history with Store is so shamelessly consistent with FAP trafficking that it cannot be overlooked. 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. MDHHS alleged only an OI of [REDACTED] in the notice mailed to Respondent. MDHHS is limited to establishing an OI as stated in their notice. It is found that MDHHS established an OI of [REDACTED] in FAP benefits.

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



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]