



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: July 28, 2017  
MAHS Docket No.: [REDACTED] 17-000435  
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) based on trafficking of Food Assistance Program (FAP) benefits.

The second issue is whether Respondent received an over-issuance of FAP 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 recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. From [REDACTED], Respondent received [REDACTED] in FAP benefits.

3. From [REDACTED], a person outside of Respondent's FAP group used FAP benefits issued to Respondent.
4. Respondent did not clearly engage in FAP-benefit trafficking.
5. On [REDACTED], MDHHS requested a hearing to establish that Respondent received an OI of [REDACTED] and committed an IPV by trafficking FAP benefits over the period 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, along with MDHHS testimony, alleged Respondent committed an IPV by trafficking [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 presented Respondent's application requesting FAP benefits (Exhibit 1, pp. 12-40). Respondent's electronic signature was dated [REDACTED]. The application listed Respondent as the only household member, which was indicative that Respondent would have received FAP benefits as a 1-person benefit group. The application stated Respondent's signature was certification of an understanding of a responsibility to report changes to MDHHS within 10 days. MDHHS did not allege that the application reported misinformation.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 43-45). Issuances from [REDACTED] totaled [REDACTED].

MDHHS presented a Bridges (the MDHHS database) document listing any authorized representatives on Respondent's case (Exhibit 1, p. 46). No authorized representative was listed.

MDHHS presented documented comments from Respondent's specialist (Exhibit 1, pp. 48-49). On [REDACTED], it was noted that Respondent reported moving back to Michigan after living in Florida; it was further noted that Respondent reported not using any FAP benefits.

MDHHS presented a public criminal record (Exhibit 1, pp. 50-51) for Respondent. The record stated Respondent was arrested on [REDACTED], while in Florida.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 52-56). Transactions exclusively in Michigan occurred from [REDACTED], through [REDACTED].

MDHHS presented TheWorkNumber.com documentation (Exhibit 1, pp. 52-53). Information was noted to be current as of [REDACTED]. Respondent address was in Florida. Various daily pays from a temporary staff agency to Respondent from [REDACTED], were listed.

MDHHS contended only Respondent was authorized to use the EBT card allegedly involved in trafficking. MDHHS further alleged Respondent must have engaged in FAP trafficking because Respondent's EBT card was used exclusively in Michigan during a time Respondent admitted he resided in Florida. For purposes of this decision, it will be assumed that Respondent was in Florida throughout the alleged OI period.

It is theoretically possible that Respondent's EBT card was hijacked; this possibility is lessened after factoring that a hijacker could not successfully purchase food with

Respondent's EBT card without Respondent's personal identification number. Presented evidence sufficiently established that Respondent allowed someone outside of the FAP-benefit group to make purchases with the EBT card.

A finding of FAP benefit trafficking requires more than allowing someone outside of the FAP benefit group to use an EBT card. MDHHS policy requires "cash or consideration" in exchange for use of the FAP benefits. "Consideration" is a legal term generally defined as something of value that is bargained for by a party as part of a contract. The requirement of "cash or consideration" requires MDHHS to establish that Respondent received something of value for use of EBT card; no such allegation was made. A client who allows someone to use his or her EBT card might theoretically do so without any thought of personal benefit.

MDHHS contended a transfer of EBT benefits is only required to establish FAP trafficking. The contention is not supported by MDHHS's definition of trafficking. MDHHS cited other policy (e.g. BAM 401e and BEM 212) to support their contention that a transfer of FAP benefits outside of the FAP group was trafficking. The policies were not considered because BAM 700's definition of trafficking is unambiguous and requires no consideration of other policy for interpretation.

The use of an EBT card by a person outside of Respondent's FAP benefit group, by itself, is not direct evidence of FAP benefit trafficking. The evidence can be used to circumstantially establish that Respondent received cash or consideration in exchange for the EBT card's usage. No other presented evidence was particularly indicative that Respondent received cash or consideration in exchange for the purchases made with his EBT card.

Based on presented evidence, it is found that MDHHS failed to establish that Respondent engaged in FAP benefit trafficking. MDHHS testimony alleged a second basis for IPV.

MDHHS testimony alternatively alleged that Respondent was a resident of Florida throughout the alleged OI period, and therefore, not eligible for FAP benefits. MDHHS specifically alleged that Respondent purposely failed to report his non-Michigan residency.

It is debatable whether MDHHS provided Respondent with proper notice of the second alleged basis for IPV. The presented IPV Repayment Agreement and Hearing Summary (see Exhibit 1, p. 1) specifically cited trafficking as the basis for IPV disqualification. Respondent's residency was referenced in each document, but only to support the allegation of trafficking. Most notably, neither document specifically alleged that Respondent failed to report residency. The absence of such an allegation in presented documentation justifies rejecting the allegation as a basis for IPV. It is found MDHHS did not allege an IPV based on Respondent's alleged failure to report residency; accordingly, an IPV and OI based on Respondent's alleged failure to update residency

will not be evaluated. The analysis will proceed to evaluate the alleged OI based on alleged trafficking.

An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700 (January 2016), p. 1. 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.

The finding that Respondent failed to engage in FAP benefit trafficking precludes a finding of a FAP benefit OI based on trafficking. Accordingly, the request to establish an OI based on FAP benefit trafficking is denied.

### **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 committed an IPV by trafficking FAP benefits. It is further found that MDHHS failed to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED]. The request to establish an IPV and OI 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]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED])

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]