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: July 28, 2017
MAHS Docket No.: [redacted] 17-004139
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 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 [redacted], Respondent made 42 EBT purchases from Store totaling more than [redacted] which involved at least one of the following: exceeded [redacted], ended in [redacted], or occurred within a short period of another transaction.

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. 5-6), 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 presented a letter to Store from the United States Department of Agriculture (USDA) Food Nutrition Service (Exhibit 1, pp. 21-23) dated July 10, 2015. The letter threatened the owner of Store with various actions due to FAP trafficking. Noted evidence of FAP trafficking included an unusually high number of transactions ending in the same cents amount, EBT expenditures from individuals within short timeframes, and excessively large transactions.

MDHHS presented a list of transactions with Store ending in even dollar amounts (Exhibit 1, pp. 24-26). 127 transactions totaling [redacted] were listed. Transaction amounts ranged from [redacted].

MDHHS presented a list of Store's EBT transactions occurring in a short timeframe with the same customer (Exhibit 1, pp. 27-30). 77 transactions totaling [redacted] were listed. The timeframes varied between 41 seconds to 24 hours.

MDHHS presented various reports of Store's EBT transactions (Exhibit 1, pp. 31-46). The report indicated 20.89% of Store's EBT income were for even-dollar transactions.

MDHHS presented a letter to Store from the United States Department of Agriculture (USDA) Food Nutrition Service (Exhibit 1, pp. 11-12). The letter was dated [redacted] The letter informed the owner of Store of a permanent disqualification from accepting EBT benefits based on a finding that Store trafficked FAP benefits.

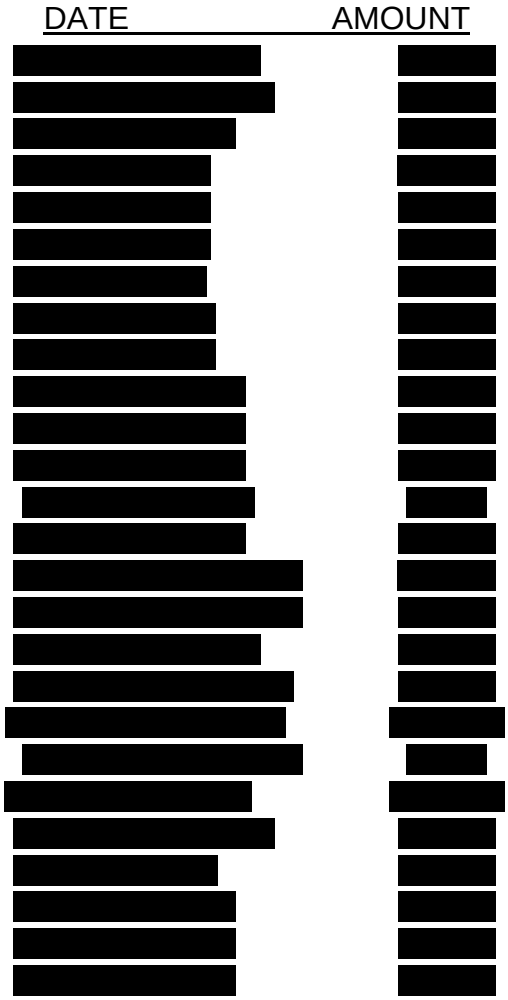
MDHHS presented various photos of Store (Exhibit 1, pp. 13-20). Photographs appeared to show Store sold various items which are presumably purchasable with EBT

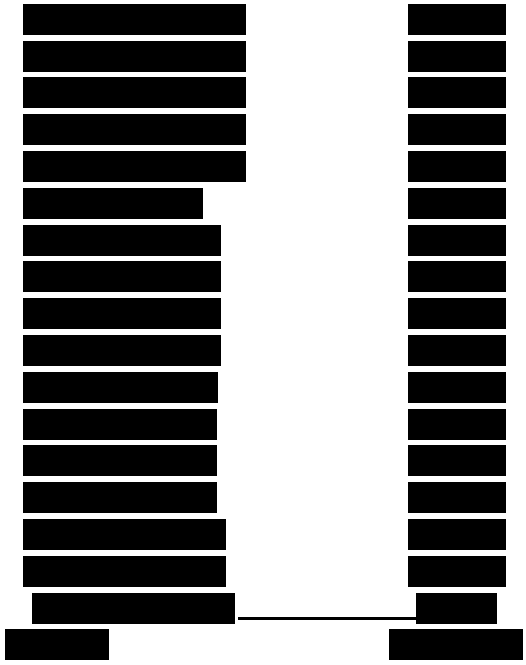
benefits; such items included cereal, gum, candy, milk, juice, condiments, coffee creamer, cheese, pre-packaged lunch meals, ice cream, frozen pizza, soup, bagged snacks, and other items.

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 a map (Exhibit 1, p. 47) of Store's area. The map showed other larger and more traditional grocery stores within an unspecified distance of Store. MDHHS presented the evidence as proof that Respondent had more traditional options over Store for making food purchases.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit 1, p. 84-90). The history listed approximately 94 transactions between Respondent and Store. Of Respondent's transactions, 43 were alleged to involve FAP trafficking (though the case summary alleged only 39 transactions involved in trafficking). The transactions by Respondent at Store alleged to be trafficking are as follows:





MDHHS testimony alleged that EBT transactions with Store exceeding [redacted] involved FAP benefit trafficking. The basis of the allegation is that stores of Store's type did not typically process legitimate EBT purchases exceeding[redacted]. The allegation is based partially on such stores generally charging a premium for items, compared to larger stores. It is also atypical for persons to need [redacted] or more in food items typically sold at smaller grocery stores. It is worth noting that Store appeared to have a fairly reasonable supply of food items that could easily justify Respondent's largest purchase from Store.

MDHHS also alleged transactions of Respondent occurring within a short period of time were motivated by FAP trafficking. The allegation is based on persons not typically needing to make back-to-back purchases, particularly when the second purchase is for a large amount that could not be processed so shortly after an earlier purchase.

MDHHS also alleged Respondent's purchases for even dollar amounts and ending in [redacted] were indicative of FAP trafficking. The odds of Respondent's purchases naturally ending in even dollar amounts or [redacted] was not provided, though the odds are perceived to be functionally impossible to have occurred naturally. Given Store's history of FAP trafficking, it is clearly and convincingly probable that the transactions occurred due to Respondent's FAP trafficking.

All alleged FAP trafficking transactions but one [redacted] met at least one of the criteria suspicious of FAP trafficking. Subtracting the single transaction from the total alleged trafficking results in an amount exceeding the amount alleged to be trafficking. Thus, exempting the transaction has no effect on the allegation.

It is found that Respondent trafficked [redacted] in FAP benefits from [redacted] Thus, it is found that Respondent committed an IPV.

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 IPV 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 [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]