



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: August 4, 2017
MAHS Docket No.: 17-001725
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 [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

1. The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) based on trafficking of Food Assistance Program (FAP) benefits.
2. The second issue is whether Respondent received an overissuance (OI) 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 FAP benefits from the State of Michigan.
2. From [REDACTED], Respondent was incarcerated.

3. From [REDACTED] \$ [REDACTED] in FAP benefits from Respondent's electronic benefit transfer (EBT) card was spent.
4. MDHHS did not establish that Respondent was involved in the trafficking of FAP benefits.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV by trafficking \$ [REDACTED] in FAP benefits 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, 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 documentation of a collateral contact dated [REDACTED]. The document was unsigned though MDHHS testimony indicated the contact was made by an investigating agent to a Michigan county deputy for the purposes of verifying Respondent's alleged dates of incarceration. The agent documented that Respondent was booked on [REDACTED], and released on [REDACTED].

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, p. 15) from [REDACTED]. Various transactions appearing totaling \$ [REDACTED] were listed.

MDHHS presented EPPIC reports (Exhibit 1, pp. 16-17). The report is a detailed history for EBT cards which includes changes in PIN. MDHHS presented the report to show that only a single EBT card was issued to Respondent and that Respondent's EBT card was the one used to make purchases during the alleged OI period.

MDHHS presented an Investigation Report (Exhibit 1, pp. 4-5). The report was authored by a regulation agent with OIG. The report stated that Respondent allegedly stated to an investigating agent that Respondent admitted possessing her EBT card during her incarceration.

MDHHS alleged Respondent must have engaged in FAP trafficking because Respondent's EBT card was used during a time Respondent was incarcerated. MDHHS further alleged no other persons were authorized to use Respondent's EBT card, as Respondent was the only FAP-benefit-group member and had no EBT card authorized representative. The allegations made by MDHHS were supported by multiple hearsay statements which would not typically be admissible. For purposes of this decision, the hearsay statements within the Investigation Report and collateral contact document will be admitted as evidence.

MDHHS' trafficking allegation assumes Respondent provided someone with her EBT card and personal identification number (PIN). Because Respondent's EBT card was used during a period of Respondent's incarceration, it is reasonably probable that Respondent provided someone with her EBT card and PIN. It is 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 PIN. A possibility of hijacking becomes even less certain when factoring that a new PIN was not utilized during the alleged OI period. Presented evidence

sufficiently established that Respondent authorized someone outside of her FAP group to use her 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 in exchange for FAP benefits; no such allegation was made.

A client who allows someone to use his or her EBT card might do so without any thought of personal benefit. The allowance could simply be done as a gift. For example, Respondent could have gifted benefits to a friend or family member knowing she would have no use for FAP benefits while incarcerated. It is also possible that Respondent authorized someone to make purchases on her behalf (though this is unlikely given Respondent’s apparent incarceration of several months).

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. Accordingly, MDHHS may not establish an IPV against Respondent. MDHHS also sought to establish an OI of FAP benefits against Respondent due to FAP benefit 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/jaf



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]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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