



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 28, 2017
MAHS Docket No.: [REDACTED] 17-003603
Agency No.: 1 [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. On [REDACTED] a person outside of Respondent's FAP group made a purchase of [REDACTED] using Respondent's EBT card from a store (hereinafter "Store#1").
3. On [REDACTED], a person outside of Respondent's FAP group made a purchase of [REDACTED] using Respondent's EBT card from a store (hereinafter "Store#2").
4. Respondent did not clearly or convincingly receive cash or consideration in exchange for the use of her EBT card.
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 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 repay agreement and MDHHS testimony alleged Respondent committed an IPV by trafficking [REDACTED] in FAP benefits in [REDACTED].

It should be noted that MDHHS obtained Respondent's agreement to repay [REDACTED] in FAP benefits (see Exhibit 1, pp. 62-65). Thus, MDHHS did not seek to establish an overissuance against Respondent.

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 for FAP benefits (Exhibit 1, pp. 10-37). Respondent's electronic signature was dated September 9, 2015. The application included boilerplate language that FAP benefits are not to be sold or traded. (see Exhibit 1, p. 13)

MDHHS presented Respondent's EBT usage history (Exhibit 1, p. 37) from a purchase dated [REDACTED]. The history stated a [REDACTED] purchase was made with an EBT card number ending in "6760" belonging to Respondent. The purchase was stated to have occurred at Store#1. A corresponding store receipt (Exhibit 1, pp. 38-39) matching the information on the EBT document was also presented.

MDHHS presented a photograph of a man (Exhibit 1, pp. 41-42) appearing to buy groceries. MDHHS testimony indicated the photograph was taken from security camera footage at Store #1 at the time of the purchase for [REDACTED].

MDHHS presented Respondent's EBT usage history (Exhibit 1, p. 43) from a purchase dated [REDACTED]. The history stated a [REDACTED] purchase was made with an EBT card number ending in "6760" belonging to Respondent. The purchase was stated to have occurred at Store#2. A corresponding receipt (Exhibit 1, p. 44) matching the information on the EBT document was also presented.

MDHHS presented a photograph of a man (Exhibit 1, p. 45) appearing to buy groceries. MDHHS testimony indicated the photograph was taken from security camera footage at Store #2 at the time of the purchase for [REDACTED]. The man pictured appeared to resemble the same man pictured in the photograph from Store#1.

Respondent did not appear for the hearing. MDHHS testimony alleged that Respondent conceded to MDHHS in pre-hearing discussions that she allowed someone outside of her FAP group to use her EBT card.

Presented evidence sufficiently verified that Respondent allowed someone outside of her FAP-benefit group to use her EBT card. MDHHS contended that such an allowance is clear and convincing evidence of trafficking. The MDHHS contention is not supported by MDHHS policy.

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 do so without any thought of personal benefit. The allowance could simply be done as a gift; a gift is not performed for cash or consideration. It is also theoretically possible that the person pictured in store photographs was making purchases for Respondent.

MDHHS presented a publication titled How to Use Your Michigan Bridge Card (Exhibit 1, pp. 46-61). MDHHS testimony indicated all FAP benefit recipients receive a copy of the publication when approved to receive FAP benefits. Among the “DO NOT” actions listed in the publication are using someone else’s food benefits for personal use and giving away a PIN (see Exhibit 1, p. 91). There are two reasons why statements from the presented publication were not persuasive in establishing FAP trafficking.

First, the statements within the publication such as those cited above could be reasonably interpreted as best practices for EBT card holders rather than MDHHS policy. For example, the publication also states “Keep your last receipt.” Based on MDHHS’ logic, an EBT card holder would violate policy by throwing away a receipt after an EBT purchase; this would be a ludicrous outcome.

Secondly, and more importantly, BAM and BEM are the source of MDHHS policy, not publications. Neither BAM nor BEM are known to state that use of an EBT card by a person outside of the FAP group, by itself, establishes trafficking.

It is found use of an EBT card by someone outside of a FAP-benefit group does not definitively establish trafficking. Though trafficking is not definitively established, the usage can be considered in determining if cash or consideration was given for the usage. Presented evidence was not sufficiently persuasive to justify an inference that Respondent received cash or consideration for the expenditures of FAP benefits. Accordingly, it is found MDHHS failed to establish Respondent trafficked FAP benefits.

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 ██████ in FAP benefits from ██████. The request to establish an IPV is **DENIED.**

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]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]