



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: September 25, 2017  
MAHS Docket No.: 17-006984  
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 September 18, 2017, 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) by trafficking Food Assistance Program (FAP) benefits.
2. 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 August 17, 2013, to March 10, 2015, Respondent made approximately 85 electronic benefit transfer (EBT) purchases from Store which totaled \$ [REDACTED]
4. Respondent's purchases did not clearly and convincingly involve FAP benefit trafficking.
5. On April 25, 2017, MDHHS requested a hearing to establish Respondent committed an IPV and is responsible for an overissuance of \$ [REDACTED] in allegedly trafficked FAP benefits from August 17, 2013, to March 10, 2015.

### **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 April 25, 2017. The document and MDHHS testimony alleged Respondent trafficked \$ [REDACTED] in FAP benefits from August 17, 2013, to March 10, 2015.

[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 general information for Store (Exhibit 1, pp. 36-37). A redacted signature was dated April 4, 2015. The form appeared to be completed by a FNS investigator. It was noted that Store had no shopping baskets, shopping carts, nor optical scanners.

MDHHS presented a letter to Store from the United States Department of Agriculture (USDA) Food Nutrition Service (Exhibit 1, pp. 51-53). The letter was dated April 24, 2015. The letter informed Store that an analysis revealed "unusual, irregular, and inexplicable" EBT transactions from October 2014 through March 2015 which were consistent with FAP-benefit trafficking; specific transactions were not listed. A notice of trafficking charges resulting in permanent disqualification from accepting EBT benefits was indicated.

MDHHS presented a letter to Store from the United States Department of Agriculture (USDA) Food Nutrition Service (Exhibit 1, pp. 54-55). The letter was dated June 17, 2015. The letter informed Store that Store's response to trafficking allegations was received and considered. The letter informed Store that it was permanently disqualified from processing EBT transactions due to trafficking.

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 Respondent's FAP-issuance history (Exhibit 1, pp. 12-14). Various issuances from August 2013 through March 2015 were listed.

MDHHS presented Respondent's EBT transaction history from the alleged OI period (Exhibit 1, pp. 15-29). MDHHS did not allege that Respondent's history was indicative of trafficking other than Respondent's transactions with Store.





The FNS investigation included an inventory for Store (Exhibit 1, p. 38). Store's inventory listed more than 20 units available for purchase for each of the following: ice cream, milk, infant formula, juice, certain fruits, beans (and related products), tomatoes, soups, breads, cereals, pastas, rice, corn, infant cereals, deli meats, canned meats, finned fish, and shell fish. Items available in quantities of less than 20 units included: butter, apples, berries, cheese, yogurt, citrus fruit, celery, and squash. Various photographs (Exhibit 1, pp. 43-50) of Store's items were consistent with the stated inventory. Store's inventory was ample enough to not render Respondent's purchases to be suspicious based on the amount spent at Store by Respondent.

MDHHS found it particularly suspicious that Respondent made multiple purchases at Store within a day and/or consecutive days. As an example, Respondent made 11 purchases over a four-day period in August 2013, 11 purchases over a four-day period in September 2014, and 12 purchases over a six-day period in March 2015. Generally, persons have no need to make so many purchases from a store over a short period of time. The pattern is suspicious because stores engaged in trafficking attempt to disguise trafficking of large transaction amounts by splitting-up transactions. Respondent's 34 different purchases over a total period of 14 days is somewhat indicative of trafficking.

Many of Respondent's purchases involved small transaction amounts. For example, of the 34 total transactions discussed above, 13 were for amounts less than \$ [REDACTED]. Generally, stores attempting to disguise trafficking would not break up transactions into amounts less than \$ [REDACTED]. This consideration somewhat supports rejecting a finding of trafficking.

It is also helpful to Respondent that her expenditure history indicated a pattern of having multiple transactions at other stores within a short period. For example, Respondent had eight transactions at a gas station on June 8, 2014. It is acknowledged that Respondent also trafficked FAP benefits at the gas station. The likelihood of cash in exchange for FAP benefits seems unlikely when factoring that Respondent's largest transaction of the eight was for \$ [REDACTED]. Generally, persons do not exchange FAP benefits for cash in such small amounts.

It is acknowledged that Respondent spent a large bulk of FAP benefits at a store involved in FAP trafficking. It is also acknowledged that Respondent's expenditure history was unusual. The unusual expenditure history can be explained by non-trafficking reasons and could have been easily justified given Store's inventory.

Given presented evidence, it cannot be stated that any single or set of Respondent's transactions at Store were clear and convincing evidence of trafficking. Accordingly, the MDHHS request to establish an IPV is denied.

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 presented evidence did not clearly and convincingly establish that Respondent trafficked FAP benefits. A finding of OI related to trafficking cannot follow a finding that an IPV related to trafficking did not occur.

### **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 trafficked FAP benefits. The MDHHS request to establish an IPV and overissuance of \$ [REDACTED] in FAP benefits is **DENIED**.

CG/

  
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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]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
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