



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.: 17-005204
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 June 22, 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

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. From May 2013 through February 2014, Respondent made 37 EBT purchases totaling \$ [REDACTED] from a store (hereinafter "Store") allegedly involved in FAP trafficking.

3. MDHHS did not establish Store's involvement in FAP trafficking.
4. MDHHS did not establish that Respondent trafficked FAP benefits.
5. On March 30, 2017, MDHHS requested a hearing to establish that Respondent committed an IPV and is responsible for an overissuance of \$ [REDACTED] in FAP benefits allegedly trafficked from May 2013 through February 2014.

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 March 30, 2017. The document and MDHHS testimony alleged Respondent trafficked \$ [REDACTED] in FAP benefits from May 2013 through February 2014.

[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 no documentary evidence concerning Store's involvement in FAP trafficking. It is acknowledged that evidence of Store's trafficking was presented in other hearings requested by MDHHS. The documentary evidence from other hearings may not be considered.

MDHHS presented Respondent's EBT transaction history with Store (Exhibit 1, pp. 72-74). The history listed approximately 37 transactions between Respondent and Store which totaled \$ [REDACTED]. No explanation was given for how MDHHS calculated that Respondent trafficked \$ [REDACTED] in FAP benefits.

Typically, MDHHS alleges that transactions for unusually high amount and for even dollar amounts involve trafficking. 3 of Respondent's transactions with Store exceeded \$ [REDACTED] (\$ [REDACTED] and \$ [REDACTED] and \$ [REDACTED]). 4 of Respondent's transactions with Store were for even dollar amounts (\$ [REDACTED], \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED]).

It is acknowledged that some of Respondent's transactions are consistent with FAP trafficking. Without any evidence of Store's trafficking, trafficking will not be inferred from Respondent's EBT history with Store. A finding of trafficking is even less appealing when MDHHS cannot provide evidence of how they arrived at the alleged amount of trafficking.

It is found that MDHHS failed to establish trafficking by Respondent. Thus, it is found that MDHHS may not disqualify Respondent for an IPV. 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 MDHHS failed to establish trafficking by Respondent. Without establishing FAP trafficking, MDHHS cannot establish an OI. It is found that MDHHS failed to establish a basis for an OI of FAP benefits against Respondent.

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/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]
[REDACTED]
[REDACTED]
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