



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: April 25, 2018
MAHS Docket No.: 18-001090
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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, 42 CFR 431.230(b), 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 April 18, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████████ regulation agent, with the Office of Inspector General. Respondent appeared and was unrepresented.

ISSUES

1. The first issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits, including imposition of a one-year disqualification from receiving FAP benefits.
2. The second issue is whether 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 permanently disqualified from accepting Electronic Benefit Transfer (EBT) transactions due to an EBT transaction history which included transactions in unusually short time frames, excessively large

transactions, and high EBT transactions averages and totals for Store's type and location.

3. On various dates from December 2015 through September 2017, Respondent had eight EBT transactions at Store totaling over \$■■■■ which included excessively large amounts and transactions performed in small periods of time.
4. On February 7, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV resulting in a one-year disqualification and is responsible for an overissuance of \$■■■■ in FAP benefits allegedly trafficked from December 2015 through September 2017.
5. Respondent has no prior history of IPV's.

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 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 on February 7, 2018, in part, to establish that Respondent committed an IPV. MDHHS' Hearing Summary and an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 7-8) specifically alleged that Respondent trafficked \$■■■■ in FAP benefits from December 2015 through September 2017.

[MDHHS] may request a hearing to... establish an intentional program violation, a disqualification, or a debt... BAM 600 (January 2018), p. 5. [For FAP benefits only, an] IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. Trafficking is... [t]he buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone... BAM 700 (January 2018), p. 2.

IPV is suspected when there is **clear and convincing** [emphasis added] evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.*, p. 8 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 unauthorized items. Respondent presented circumstantial evidence of trafficking by Respondent. The simplified argument against Respondent is as follows:

- Store was involved in FAP trafficking, in part, based on suspicious transactions.
- 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 consistent with trafficking.
- Therefore, Respondent trafficked FAP benefits.

MDHHS presented an investigation report of Store (Exhibit A, pp. 30-45) dated August 12, 2017. The report was completed by an investigator from the United States Department of Agriculture Food Nutrition Service (FNS) investigator following a visit to Store. It was noted that Store's food business was housed in 500 square feet as part of a gas station. Investigation findings included the following: Store did not have shopping baskets or optical scanners, Store's most expensive EBT eligible item was a \$ [REDACTED] pint of ice cream. Store's food inventory was noted to include more than 20 items of the following: milk, ice cream, juices, cakes/muffins..., pasta, snacks, beans, soups, and meat jerky. Store had none of the following: bread, fresh fruit or vegetables, breakfast cereals, or deli meats. Various photographs of Store were consistent with investigation findings.

MDHHS presented a letter from FNS to Store (Exhibit A, pp. 14-29) dated September 14, 2017. The letter informed Store that an analysis of EBT transactions at Store demonstrated "clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm". Transactions noted to be suspicious included multiple transactions in unusually short time frames and "excessively large purchase transactions". An attachment of suspicious transactions at Store included transactions which were \$24 and higher.

MDHHS presented a letter from FNS to Store (Exhibit A, pp. 12-13) dated October 3, 2017. The letter informed Store that it was "permanently disqualified" from receiving FAP benefits.

Presented evidence 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 EBT transaction history with Store (Exhibit A, p. 46). The history listed approximately 13 transactions between Respondent and Store MDHHS highlighted eight transactions totaling \$ [REDACTED] and alleged these particular transactions involved trafficking. The transactions are as follows:

<u>DATE</u>	<u>TIME</u>	<u>AMOUNT</u>
██████████	██████	██████
██████████	██████	██████
██████████	██████	██████
██████████	██████	██████
██████████	██████	██████
██████████	██████	██████
██████████	██████	██████
██████████	██████	██████

Respondent testified that she did not traffic EBT benefits. Respondent testified that she sometimes has to buy food for her children late at night (when no other stores are open) and she is out of FAP benefits. She testified that at those times, Store allowed her to purchase food on credit. Respondent testified that her transactions for \$████ and \$████ reflect her payments to Store for food previously purchased on credit.

Accepting Respondent's testimony would require accepting that Respondent had to buy hundreds of dollars of food on credit because she ran out of food and EBT benefits. Respondent's testimony presented a possible explanation for her large purchases at a gas station mart but the far more likely explanation, given the evidence, is that Respondent traded EBT benefits for cash and/or other consideration.

Respondent's transactions of \$████ and \$████ far exceeded the threshold amount (\$24) set by FNS as indicative of trafficking at Store. Respondent's highest EBT transaction amounts at Store were for even dollar amounts which are indicative of poorly disguised trafficking transactions. Respondent's back-to-back transactions were indicative of trafficking as persons often perform a small transaction to check an EBT balance before a larger transaction which is performed for an exchange of EBT benefits for money. Respondent's transactions dated March 9, 2017 and June 21, 2017, were specifically cited by FNS as suspicious transactions at Store (see Exhibit A, pp. 17-29). It is also notable that Store happens to be located near a larger grocery store with ample food offerings; thus, Respondent's purchases would not be reasonably explained by not having better shopping options than a gas station mart.

Given Store's history of FAP trafficking, limited food inventory, and Respondent's excessively large and back-to-back purchases at Store, it is found that Respondent clearly and convincingly trafficked FAP benefits in excess of \$████. 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, an IPV disqualification period of one year is justified. MDHHS also alleged that Respondent's trafficking of FAP benefits justifies finding an OI of \$ [REDACTED] in FAP benefits.

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 was already found that Respondent trafficked \$ [REDACTED] in FAP benefits. Thus, MDHHS established that Respondent is responsible for 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 December 2015 through September 2017. It is further found that MDHHS established an OI of \$ [REDACTED] against Respondent. The MDHHS request to establish an overissuance and a one-year disqualification against Respondent is **APPROVED**.

CG/



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]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]
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