



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 3, 2018  
MAHS Docket No.: 18-001381  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND  
ESTABLISHMENT OF AN OVERISSUANCE**

Upon the request for a hearing by the Department of Health and Human Services (Department), 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 March 28, 2018, 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. The hearing was held at least 30 minutes after the scheduled hearing time. There was no indication that Respondent did not receive notice of the hearing. The record was closed at the end of the hearing on the scheduled hearing date.

**ISSUES**

1. The first issue is whether MDHHS established, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV).
2. The second issue is whether Respondent should be disqualified from receiving Food Assistance Program (FAP) benefits for one year.
3. The third issue is whether Respondent received an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup.

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On February 17, 2017, MDHHS issued to Respondent \$ [REDACTED] in retroactive FAP benefits.
2. On February 19, 2017, a Facebook post stating “Got stamps for sale who need them” (see Exhibit A, p. 12) was made. Various responses to the posting included the following: “... PM sent”, “Okay”, “message me cuz”, and “Howmany”.
3. The Facebook post was accompanied by a photo under a nickname which included Respondent’s last name (see Exhibit A, p. 12).
4. The Facebook account name associated with the post included Respondent’s first and last name (see Exhibit A, p. 12).
5. The Facebook account holder listed a “Lives in ...” city that matches Respondent’s city of residence (see Exhibit A, p. 13).
6. The MDHHS database had no other persons with Respondent’s first and last name as a recipient of FAP benefits.
7. Various photos from the Facebook page were reasonably similar with a photo of Respondent’s Secretary of State photograph.
8. On February 20, 2017, Respondent’s Electronic Benefit Transfer (EBT) benefits were used at the following times and amounts:

<u>DATE</u>	<u>TIME</u>	<u>AMOUNT</u>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
9. On February 14, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on attempted trafficking and/or trafficking of \$ [REDACTED] in FAP benefits.
10. As of February 14, 2018, 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 (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 that Respondent committed an IPV. [MDHHS] may request a hearing to establish an intentional program violation, a disqualification, or a debt.... BAM 600 (January 2018), p. 5.

MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by selling and/or attempting to sell FAP benefits on social media. The allegations were consistent with an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[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 [established by one of the following]:

- The 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.
- The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for FAP benefits.
- Purchasing a product with FAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount
- Purchasing a product with FAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with FAP benefits in exchange for cash or consideration other than eligible food.
- Intentionally purchasing products originally purchased with FAP benefits in exchange for cash or consideration other than eligible food.
- Attempting to buy, sell, steal, or otherwise affect 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 signatures, 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 or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (October 2017), p. 1. 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 a paper copy of a Facebook post stating "Got stamps for sale who need them" (see Exhibit A, p. 12). Various responses to the post included the following: "... PM sent", "Okay", "message me cuz", and "Howmany". The Facebook post was accompanied by a photo under a nickname which included Respondent's last name.

A literal reading of the Facebook post is consistent with an attempt to traffic benefits. Social media posts are not always intended to be taken literally. Comments following the post were consistent with establishing that the poster intended to sell FAP benefits.

Establishing an IPV from a social media post requires acceptance that the social media account holder associated with the post is the same person making the post. It is theoretically possible that someone may hijack or borrow another's account to make unwanted posts. In the present case, Respondent did not present any evidence alleging any such hijacking or borrowing. Evidence that was presented was indicative that any such hijacking or borrowing occurred.

MDHHS presented a document (Exhibit A, p. 13) containing various pieces of information associated with the Facebook page at issue and Respondent. A Facebook account name associated with the Facebook post was listed; A "Lives in..." city for the Facebook account holder was listed. The document included various selfies from the Facebook page. The document included Respondent's Secretary of State photograph; a testifying regulation agent testified that the Secretary of State photo was obtained from Respondent's information in MDHHS' database.

Finding that Respondent attempted to traffic requires linking Respondent to the Facebook post. A regulation agent testified that a search for persons with Respondent's name resulted in identifying only Respondent as a benefit recipient; thus, name misidentification appears improbable. A comparison of photographs from the Facebook account at issue and Respondent's Secretary of State photograph were reasonably consistent. Respondent's first and last name were included as part of the Facebook account name associated with the post at issue. Respondent's city of residence matches the "Lives in..." city of residence from the Facebook account at issue. The evidence sufficiently identified Respondent as the holder of the Facebook account.

The Facebook post attempting to traffic benefits did not include an amount of FAP benefits. Despite a lack of evidence of an amount trafficked, the evidence established an attempt to traffic some amount of benefits; this is sufficient to establish an IPV. Thus, it is found that Respondent committed an IPV by attempting to traffic FAP benefits.

The standard 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, a one-year disqualification period is justified. The analysis will proceed to determine if an OI was established.

For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2018) pp. 1-2. The amount for trafficking-related IPV is the value of the trafficked benefits (attempted or actually trafficked) as determined by:

- The court decision.
- The individual's admission.
- Documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. This can be established through circumstantial evidence.

BAM 720 (October 2017) p. 8.

As noted above, Respondent's Facebook post did not include an amount of FAP benefits for sale. MDHHS alleged that an amount of benefits can be inferred from Respondent's purchases.

MDHHS presented documentation of a portion of Respondent's FAP issuance history (Exhibit A, p. 22). Respondent's issuance history listed a \$3,120 issuance on February 17, 2017. Comments from the document indicated that Respondent was awarded the unusually large issuance as retroactive payment owed to Respondent as part of a class action lawsuit involving alleged fugitive felons.

Respondent's FAP expenditure history listed multiple purchases from February 17, 2017 (the date of the Facebook post at issue) through February 22, 2017. Respondent's purchases exceeded \$1,000 in FAP benefits. A regulation agent testified that only Respondent's six largest purchases (totaling \$██████) were alleged to be caused by trafficking (Exhibit A, p. 23); the purchases were all from February 20, 2017 and are cited in the above Findings of Fact.

Respondent spent over \$1,000 in FAP benefits over six days. Generally, spending more than \$1,000 in FAP benefits over six days is suspicious for FAP trafficking; this is particularly true after posting a sale of FAP benefits. The suspicion lessens when factoring that Respondent presumably received more FAP benefits at one time than she ever previously received. It can also be assumed that Respondent spent some portion of the benefits on herself.

Two sets of Respondent's transactions occurred within periods of approximately two minutes. In previous IPV cases, MDHHS has successfully argued that EBT transactions occurring close in time are evidence of trafficking. In such previous cases, the transactions are improbably legitimate because the store processing the transactions could not realistically ring up food items so quickly. Also in such previous cases, the store processing the transactions was complicit in the trafficking. In the present case, MDHHS did not allege that the store that processed any of Respondent's benefits was complicit in trafficking FAP benefits. Thus, multiple transactions close in time is not compelling evidence of trafficking.

The evidence established that Respondent spent a large number of FAP benefits over a relatively short timeframe. The evidence also established two sets of purchases close in time that could be indicative of FAP trafficking. The evidence could also be consistent with Respondent stocking up on food for herself and/or buying large ticket items that can be processed quickly. Given the evidence, determining which of Respondent's transactions, if any, were the result of trafficking is not possible. Without knowing how much in FAP benefits were trafficked, an OI cannot be established.

### **DECISION AND ORDER**

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV. The MDHHS request to establish a one-year disqualification against Respondent is **APPROVED**.

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that Respondent did not receive an OI of \$ [REDACTED] of FAP benefits based on trafficking. The MDHHS request to establish an OI against Respondent is **DENIED**.

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]  
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