



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED] - [REDACTED]

Date Mailed: June 7, 2018
MAHS Docket No.: 17-015029
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, 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 26, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Jennifer Allen, 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) which justified imposing an IPV disqualification against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) 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. As of June 2015, Respondent was an ongoing FAP benefit recipient. Respondent did not have an authorized FAP benefit representative (Exhibit A, pp. 17-18, 22-25)

2. From June 5, 2015, through June 18, 2015, Respondent was incarcerated. (Exhibit A, p. 10)
3. From September 16, 2015, through September 24, 2015, Respondent was incarcerated. (Exhibit A, pp. 11-12)
4. From October 9, 2015, through October 16, 2015, Respondent was incarcerated. (Exhibit A, pp. 13-14)
5. From December 17, 2015, through September 16, 2016, Respondent was incarcerated. (Exhibit A, pp. 15-16)
6. From June 2015 through April 2016, Respondent received \$ [REDACTED] per month in FAP benefits. (Exhibit A, pp. 19-20)
7. During Respondent's dates of incarceration from June 2015 through April 2016, \$ [REDACTED] in FAP benefits were spent from Respondent's Electronic Benefits Transfer (EBT) card. (Exhibit A, pp. 26-33)
8. On October 10, 2017, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from June 2015 through April 2016 based on FAP trafficking and/or "unauthorized use". MDHHS also requested a hearing to impose a corresponding IPV disqualification against Respondent.

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 testimony alleged that Respondent committed an IPV by trafficking \$ [REDACTED] of FAP benefits. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated October 10, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

[An IPV is a] benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. Bridges Program Glossary (October 2015), p. 36. A suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

BAM 720 (January 2016), p. 1; see also 7 CFR 273(e)(6).

For FAP benefits only, an IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. MDHHS goes on to list various scenarios which are considered FAP trafficking; the relevant scenario states that FAP trafficking is established by the “buying, selling or stealing of 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 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).

The evidence established that \$ [REDACTED] in FAP benefits were spent from Respondent's EBT card during times when Respondent was incarcerated. The evidence also established that Respondent did not have a representative on his case authorized to make EBT purchases on his behalf. MDHHS contended that the evidence sufficiently established trafficking by Respondent.

From the evidence, it can be inferred that someone other than Respondent used Respondent's EBT card during periods of Respondent's incarceration. It can be further inferred that someone who had access to Respondent's EBT card also had access to Respondent's personal identification number (PIN).

Notably, “cash or consideration” in exchange for FAP benefits is required to establish FAP benefit trafficking. “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 his EBT card. Respondent's apparent allowance of access to his EBT benefits is not sufficient evidence that he received cash or consideration for the allowance.

A finding that an OI was not established by the presented evidence is bolstered by a policy interpretation by the federal agency in charge of FAP benefit regulations. During the hearing, MDHHS acknowledged that since the date that MDHHS requested a

hearing, the Food and Nutrition Service informed MDHHS that the cash or consideration required of FAP trafficking cannot be established merely from use of an EBT card during a person's incarceration. Based on the evidence, MDHHS failed to establish that Respondent committed an IPV by trafficking.

MDHHS alternatively contended that Respondent committed an IPV by the "unauthorized use" of his EBT card. Specifically, MDHHS alleged that Respondent committed an IPV by allowing someone who was not an authorized representative to access his benefits. Given the usage of Respondent's EBT card during his incarceration, the absence of an authorized representative, and no evidence from Respondent suggesting another explanation, the evidence established that Respondent allowed someone who was not an authorized representative to access to his EBT benefits.

MDHHS alleged an IPV based on "unauthorized use" by reliance on 7 CFR 273.16(c)(2) which states that an IPV is established by any act that violates SNAP regulations¹ "for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." Respondent's allowance of a non-authorized representative to use FAP benefits was a transfer of benefits. MDHHS must also establish a violation of regulations to establish an IPV by unauthorized usage.

MDHHS policy stated that an authorized representative who has access to a client's benefits "must be designated in writing by the client, via the MDHHS-1171, Assistance Application, and/or DHS-247, Request for Food Stamp Authorized Representative." BAM 110 (January 2018) p. 10. Presented documentation from Respondent's case file listed no authorized representative on Respondent's case. MDHHS testimony also credibly indicated that Respondent reported no authorized representative. Respondent's failure to report an authorized representative in writing is a violation of MDHHS' regulations.

MDHHS established that Respondent violated MDHHS policy for the purpose of an unauthorized transfer of FAP benefits. 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 acknowledged that Respondent had no previous IPV disqualifications. Thus, an IPV disqualification period of one year is justified. MDHHS also requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits.

¹ The Supplemental Nutrition Assistance Program (SNAP) is the federal equivalent of Michigan's FAP.

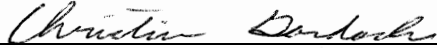
When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* 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.

MDHHS established that \$ [REDACTED] in FAP benefits were spent during Respondent's incarceration. The amount is deemed to be an unauthorized transfer justifying an OI. Thus, MDHHS established a \$ [REDACTED] OI against Respondent.

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 unauthorized use of FAP benefits. 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

Deborah Little
MDHHS-Wayne-49-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS