



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: July 17, 2018  
MAHS Docket No.: 17-015008  
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 July 11, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Kelley McLean, assistant attorney general. Patrick Waldron, regulation agent, with the Office of Inspector General testified on behalf of Respondent. Respondent appeared and was represented by her attorney, Steven M. Gittleman. [REDACTED] of Linguistica International participated as a [REDACTED] translator.

**ISSUES**

The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies 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. On May 19, 2015, Respondent electronically signed and submitted to MDHHS an application for Food Assistance Program (FAP) benefits. (Exhibit A, pp. 67-86)

2. On an unspecified date, MDHHS approved Respondent's FAP eligibility from September 2015. (Exhibit A, pp. 48-50)
3. A pamphlet sent to clients who apply for FAP benefits stated to not sell or trade FAP benefits. The pamphlet further warns that breaking FAP rules could result in disqualification and/or repayment of FAP benefits which are improperly traded or sold. (Exhibit A, pp. 107-122)
4. During all relevant times, Respondent did not utilize an authorized representative. (Exhibit A, pp. 56-57, and 63)
5. From July 2015 through January 2017, Respondent made approximately 21 Electronic Benefit Transfer (EBT) purchases from [REDACTED], Michigan (hereinafter "Store"). Respondent's transactions at Store included the following which were alleged by MDHHS to involve trafficking:

July 24, 2015	\$ [REDACTED]	
July 27, 2017	\$ [REDACTED]	
August 1, 2017	\$ [REDACTED]	
September 25, 2017	\$ [REDACTED]	
January 8, 2016	\$ [REDACTED]	
January 21, 2016	\$ [REDACTED]	
February 12, 2016	\$ [REDACTED]	
February 25, 2016	\$ [REDACTED]	
April 27, 2016	\$ [REDACTED]	
June 22, 2016	\$ [REDACTED]	
July 21, 2016	\$ [REDACTED]	
September 12, 2016	\$ [REDACTED]	
September 20, 2016	\$ [REDACTED]	
October 26, 2016	\$ [REDACTED]	
November 22, 2016	\$ [REDACTED]	
November 22, 2016	\$ [REDACTED]	(73 seconds after last transaction)
December 8, 2016	\$ [REDACTED]	
December 23, 2016	\$ [REDACTED]	
January 11, 2017	\$ [REDACTED]	
January 18, 2017	\$ [REDACTED]	(Exhibit A, pp. 103-104)

Transactions marked with an asterisk were alleged by Food and Nutrition Service (FNS) to be trafficking by Store. (Exhibit A, pp. 17-18, 31-38)

6. On or near October 24, 2016, FNS performed an on-site investigation of Store. Investigative findings included the following: Store was 2,700 square feet, Store had 10 or fewer shopping carts, Store had 10 or fewer shopping baskets, Store did not use optical scanners at checkout, Store used an adding machine to add purchases, and Store had no private storage area for food. (Exhibit A, pp. 40-55)

7. On January 17, 2017, FNS sent Store correspondence informing Store that its EBT transactions from April 2016 through September 2016 demonstrated “clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm”. Evidence cited by FNS against Store included an unusually high number of transactions ending in a same-cents value (\$.99), multiple transactions from individual EBT accounts within unusually short timeframes, exhausting individual EBT accounts in unusually short timeframes, and excessively large EBT transactions (\$86.43 and higher). (Exhibit A, pp. 14-39)
8. On February 7, 2017, following receipt of correspondence from Store, FNS informed Store that it was “permanently disqualified” from accepting EBT transactions. (Exhibit A, pp. 12-13)
9. On October 9, 2017, MDHHS requested a hearing to establish a one year IPV disqualification against Respondent due to Respondent’s alleged trafficking at Store. MDHHS also requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in allegedly trafficked FAP benefits. (Exhibit A, p. 1)
10. As of the date of hearing, Respondent had no known history of IPV disqualifications. (Exhibit A, p. 125)

### **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’ Hearing Summary and an Intentional Program Violation Repayment Agreement specifically alleged that Respondent trafficked \$ [REDACTED] in FAP benefits at Store from July 2015 through January 2017.

MDHHS may request a hearing to establish an intentional program violation, a disqualification, or a debt. BAM 600 (January 2018), p. 5. An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. MDHHS defines trafficking as 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.” BAM 700 (January 2018), p. 2. MDHHS also defines trafficking as the “stealing, trading, buying, selling, or

attempted to have been stolen, traded, bought or sold of FAP benefits for cash or consideration other than eligible food.” Bridges Program Glossary (May 2018) p. 69.

MDHHS suspects an IPV “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 that Respondent trafficked FAP benefits by exchanging FAP benefits for cash and/or items not authorized to be purchased with an EBT card. The simplified argument against Respondent is as follows:

- Store was administratively established to have engaged in FAP trafficking based on a pattern of EBT transactions which were consistent with trafficking.
- Over a period of time, Respondent had transactions at Store which were consistent with trafficking.
- Therefore, Respondent trafficked FAP benefits.

MDHHS presented various documents from FNS' investigation of Store concerning trafficking. FNS' investigation included photographs of Store, an inventory of Store's EBT-eligible items, specific EBT transactions at Store which FNS suspected to involve trafficking, and correspondence to Store. The evidence established that Store trafficked FAP benefits due to EBT transactions consistent with trafficking. MDHHS alleged that 20 of Respondent's transactions at Store were also consistent with trafficking.

FNS cited transactions at Store ending in same-cents value as support for finding that Store was involved in trafficking (specifically transactions ending in cent values of \$.99) Nine of Respondent's transactions at Store ended in cent values alleged by FNS to involve trafficking (7 of which were specifically listed by FNS in their investigation of Store). Respondent's same-cent transactions at Store were consistent with trafficking FAP benefits.

FNS also cited “excessively large” transactions at Store to be suspicious for trafficking. 19 of Respondent's transactions at Store exceeded the \$86.43 threshold used by FNS (12 of which were specifically listed by FNS in their investigation of Store). Respondent's large transactions at Store were consistent with trafficking FAP benefits.

FNS cited EBT transactions within unusually short timeframes as consistent with trafficking. Respondent's transactions on November 22, 2016, were 73 seconds apart and exceeded \$100. Given that Store utilized an adding machine, it is unlikely that Store could have added \$100 worth of EBT-eligible food within such a short timeframe. Again, Respondent's EBT transactions were consistent with trafficking.

On cross examination, MDHHS testimony acknowledged that it has no firsthand information about what Respondent received for her EBT transactions. Firsthand information is not a requirement to establishing FAP trafficking. MDHHS presented sufficient circumstantial evidence to support the trafficking allegations.

On cross examination, MDHHS also acknowledged that Respondent's EBT transaction amounts and timeframes, by themselves, were not improper. Respondent's attorney's questioning implied that Respondent's EBT transactions at Store are potentially explainable by legitimate purchases for food. Given that Respondent had 21 transactions at Store and all 21 were either "excessively large", ending in \$.99, and/or close in time to another EBT transaction, the likelihood of a non-trafficking explanation is miniscule.<sup>1</sup> Respondent's EBT history was clear and convincing evidence of FAP trafficking despite Respondent's testimony that she never made any improper purchases. 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. 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. BAM 725 (January 2016), p. 16.

MDHHS acknowledged that Respondent had no previous IPV disqualifications. 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 FAP benefits.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. 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 2016), 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]

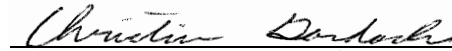
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<sup>1</sup> MDHHS did not alleged that a transaction on July 23, 2015 for \$1.99 involved trafficking. Though the transaction was not alleged to be trafficking, the same-cent amount was consistent with trafficking.

**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 July 2015 through January 2017. It is further found that MDHHS established an OI of \$ [REDACTED] against Respondent. The MDHHS requests to establish an overissuance and a one-year disqualification against Respondent are **APPROVED**.

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) 763-0155; 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**

Clarence Collins  
MDHHS-Wayne-55-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Counsel for Respondent**

Steven M. Gittleman  
2649 Caniff  
Hamtramck MI 48212

**Respondent**

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████████████████████  
██████████ MI ██████████

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS