



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: August 30, 2018  
MAHS Docket No.: 18-002244  
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 August 2, 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 Patrick Waldron, 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. On October 7, 2015, Respondent applied for FAP benefits. Respondent reported being the only household member. (Exhibit A, pp. 12-22)

2. Respondent received FAP benefits for benefit months of December 2015, January 2016, and February 2016. (Exhibit A, p. 27)
3. Respondent did not have an authorized representative while receiving FAP benefits. (Exhibit A, p. 28)
4. From December 24, 2015, through at least March 8, 2016, Respondent was incarcerated. (Exhibit A, p. 4)
5. From January 7, 2016, through March 8, 2016, \$[REDACTED] in FAP benefits were spent from Respondent's Electronic Benefit Transfer (EBT) card. (Exhibit A, pp. 30-31)
6. On March 12, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from January 2016 through March 2016 based on "unauthorized" FAP transactions. MDHHS also requested a hearing to impose a one-year IPV disqualification against Respondent. (Exhibit A, pp. 1-2)

### **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).

In an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures, MDHHS alleged that Respondent trafficked \$[REDACTED] in FAP benefits. MDHHS testimony acknowledged that there was no evidence that Respondent received cash or consideration, and therefore, Respondent did not clearly and convincingly traffic FAP benefits. MDHHS alternatively alleged that Respondent committed an IPV from the unauthorized use of FAP benefits.

An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

- (1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or
- (2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities. 7 CFR 253.8 (a)

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 SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16 (c)

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.

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** [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).

During a period that Respondent was incarcerated, \$ [REDACTED] in FAP benefits were spent from Respondent's EBT card. Respondent did not authorize a representative while receiving FAP benefits; thus, Respondent did not authorize any persons to purchase FAP benefits on his behalf. MDHHS contended these considerations were sufficient to establish an IPV.

Respondent did not violate any known federal or state regulation concerning use of an EBT card. MDHHS contended that Respondent gave his personal identification number (PIN) to another person so his FAP benefits could be used while he was incarcerated. Giving away a PIN is neither a violation of federal regulations nor MDHHS policy. A MDHHS publication (which was not presented as an exhibit) given to FAP recipients

informs clients to not give away their PIN, but not heeding the advice of a state publication is not evidence of a federal or state regulation violation.

MDHHS also contended that Respondent violated federal or state regulations by allowing someone outside of his FAP group to purchase FAP benefits and not naming that person in writing. State and federal regulations indeed require that FAP recipients name authorized representatives in writing.<sup>1</sup> A reading of 7 CFR 273.2 suggests that naming an authorized representative in writing is for the purpose of ensuring that persons who report information, receive letters, and/or otherwise act on behalf of a client have the client's permission to do so. Notably, there is no known law or regulation requiring clients to make their own EBT purchases or barring them from allowing someone else to make an EBT purchase.

Given the evidence, MDHHS failed to establish that use of Respondent's EBT account while incarcerated violated federal or state regulations. Thus, MDHHS failed to establish an IPV by Respondent. MDHHS further alleged that Respondent was responsible for 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. BAM 700 (January 2016), p. 1. An overissuance 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.

The definition for an IPV in the Bridges Program Glossary and BEM 720 require an OI for an IPV to be established. An OI is an "Issuance of more benefits than the eligible group is entitled to receive." Bridges Program Glossary (May 2018), p. 48. MDHHS elsewhere defines an OI as the amount of benefits issued to the client (or CDC provider) in excess of what it was eligible to receive. BAM 700 (January 2018), p. 1. An OI is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *Id.*, pp. 2-3.

MDHHS' case summary did not allege that Respondent received benefits to which Respondent was not entitled.<sup>2</sup> MDHHS did not allege that Respondent trafficked FAP benefits. Thus, MDHHS policy precludes a finding that an OI occurred. The same analysis applies to federal regulations. Thus, MDHHS failed to establish that Respondent is responsible for an OI of FAP benefits.

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<sup>1</sup> See BAM 110 (April 2018) p. 9 and 7 CFR 273.2(n)(1)(i)

<sup>2</sup> MDHHS' hearing statements alleged that Respondent received an OI because Respondent was ineligible for FAP benefits during incarceration. This allegation was not considered as an OI basis because the allegation was not asserted in the hearing summary nor was the OI calculated based on the allegation.

**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 committed an IPV. MDHHS also failed to establish that Respondent received an OI of \$[REDACTED] in FAP benefits. The MDHHS requests to establish an overissuance and a one-year IPV disqualification against Respondent are **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) 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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

Tara Roland 82-17  
MDHHS-Wayne-17-Hearings

**Respondent**

[REDACTED]  
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C Gardocki  
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