



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: September 12, 2018  
MAHS Docket No.: 18-003599  
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 scheduled for August 15, 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 Daniel Beck, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUES**

The first issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification.

The second issue is whether MDHHS established a basis for recoupment related to trafficking of Food Assistance Program (FAP) 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 December 12, 2016, Respondent submitted to MDHHS a Redetermination which listed Respondent as the only member of her household. (Exhibit A, pp. 12-19)

2. On February 17, 2017, MDHHS issued a \$ [REDACTED] FAP payment to Respondent. (Exhibit A, p. 21). The \$ [REDACTED] issuance was made pursuant to a court order for retroactive benefits that MDHHS denied to Respondent from December 30, 2012, to January 9, 2015 (see Exhibit A, pp. 24-28).
3. On March 17, 2017, a \$ [REDACTED] purchase was made with Respondent's Electronic Benefit Transfer (EBT) card. (Exhibit A, p. 29) The purchase included 35 quantities of "2-7.5 Lb." bags of "wing dings" totaling \$ [REDACTED]. The remaining purchase was for cheeses. (Exhibit A, p. 31)
4. On June 7, 2017, an OIG agent called Respondent concerning her purchase from March 17, 2017. When asked about the purchase, Respondent stated that she bought the food for a barbecue that she held for family and friends.
5. On April 5, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on trafficking of \$ [REDACTED] in FAP benefits.
6. Respondent has no prior history of IPV's. (Exhibit A, pp. 22-23)

### **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 to establish that Respondent committed an IPV. MDHHS may request a hearing to establish an intentional program violation. BAM 600 (January 2018), p. 5.

MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by selling FAP benefits. 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.

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)

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 the selling 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. BAM 700 (January 2018), p. 2.

An 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. 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 implicitly contended that a FAP transaction exceeding \$1,800 by a single individual is prima facie evidence of trafficking. Judicial notice will be taken that Respondent's transaction was unusual due to its amount.<sup>1</sup> In Respondent's defense, the amount of expenditure is primarily unusual because most FAP recipients do not have thousands to spend on FAP benefits. Respondent only had so much to spend because MDHHS was ordered by a court to issue over \$3,000 in retroactive FAP benefits to Respondent. Notably, neither MDHHS nor federal regulations prohibit clients from spending large amounts of FAP benefits.

Respondent's transaction would be more indicative of trafficking if Respondent, who had no authorized representative, was not present when the transaction was processed. Based on photographs from the store taken at the time of purchase, MDHHS acknowledged that Respondent was present during the transaction.

MDHHS alleged that the store where the purchase was made was 20 miles from Respondent's home and that the same store had two other locations within 11 miles of Respondent's home. The MDHHS investigator also alleged it was relevant that Respondent had only shopped at the store one other time within a period of two years. The proximity of the store to Respondent's home and/or Respondent's frequency of visiting store provides no particular insight into whether Respondent trafficked benefits.

The OIG agent testified that Respondent told him that she made the large purchase as part of a large family barbecue. MDHHS contended that Respondent's statement was prima facie evidence of trafficking; for multiple reasons, the MDHHS contention is not persuasive.

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<sup>1</sup> See MRE 201.

Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits. 7 CFR 274.7(a).

MDHHS would presumably argue that 7 CFR 274.7(a) prohibits clients from sharing food because “program benefits” cannot be shared. “Program benefits” are not known to be defined by federal regulations. Given that 7 CFR 274.7(a) discusses purchases, “program benefits” is likely a reference to the SNAP benefits rather than the actual food purchased with the benefits. This likelihood is further supported by not referring to “food” from the federal regulation at issue. Thus, 7 CFR 274.7(a) is interpreted as a statement that FAP benefits can only be used by household members or authorized representatives. Technically, Respondent did not share program benefits, only food purchased with program benefits.

Even if federal regulations barred the sharing of food purchased with a Bridge card, and assuming that Respondent made a large purchase of food for a family barbecue, Respondent would not appear to have an intent to commit an IPV. An IPV requires a “deceitful intent”. Respondent’s reporting of the barbecue to the investigating agent was presumably not reported as a confession of fraud but as unawareness that she committed any SNAP regulation. Thus, Respondent may have violated federal regulations, but did not intend to do so.

Also, again assuming federal regulations bars clients from sharing food, MDHHS would have difficulty in establishing an amount of trafficking by Respondent. If Respondent used FAP benefits to buy food for a barbecue, Respondent surely consumed some portion of the food. No evidence was presented to determine which portion of food was eaten by Respondent.

Given the evidence, it is possible that Respondent trafficked FAP benefits by purchasing over \$1,800 in chicken wings and then selling them to some small business for money. Though such a possibility exists, the evidence did not clearly and convincingly establish such a possibility. Thus, MDHHS failed to establish an IPV by Respondent.

The standard 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.<sup>2</sup>

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<sup>2</sup> See also 7 CFR 253.8 (b) for the corresponding federal regulations.

A finding that Respondent did not commit an IPV precludes MDHHS from establishing a disqualification period against Respondent. Thus, the request to establish a one-year disqualification period against Respondent is denied.

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 in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.<sup>3</sup>

MDHHS also attempted to establish a basis for recoupment for benefits allegedly trafficked by Respondent. The finding that Respondent did not commit an IPV or traffic benefits precludes MDHHS from establishing a corresponding basis for recoupment. Thus, MDHHS is denied their request to establish recoupment of \$ [REDACTED]

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for recoupment of \$ [REDACTED] in allegedly trafficked FAP benefits. MDHHS further failed to establish a basis to impose a one-year IPV disqualification against Respondent. The MDHHS requests to establish a basis for recoupment and a disqualification period 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.

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<sup>3</sup> See also 7 CFR 273.18(c)(1)(ii) for the corresponding federal regulations.

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**

LaClair Winbush  
MDHHS-Wayne-31-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS