



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: September 12, 2018  
MAHS Docket No.: 18-004812  
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 October 5, 2015, Respondent submitted an electronic application to MDHHS which requested FAP benefits. (Exhibit A, pp. 11-21)

2. Following Respondent's application, MDHHS mailed Respondent a publication titled, "How to Use Your Michigan Bridge Card". The publication warned clients that trafficking FAP benefits could result in disqualification and/or repayment of benefits. (Exhibit A, pp. 41-56)
3. From February 2017 through September 2017, Respondent received ongoing FAP benefits.
4. On February 17, 2017, Respondent received an issuance of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 22-23) 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. (Exhibit A, pp. 28-32)
5. On February 20, 2017, Respondent bought \$ [REDACTED] in food items from Gordon Food Service using FAP benefits. (Exhibit A, p. 26) Respondent's purchases included over \$ [REDACTED] in candy items. (Exhibit A, p. 33) Respondent was not present for the purchase.
6. On or shortly after February 20, 2017, Respondent reported that his Bridge Card was stolen.
7. On May 1, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV and received an OI based on trafficking of \$ [REDACTED] in FAP benefits. (Exhibit A, p. 1)
8. Respondent has no prior history of IPV's. (Exhibit A, pp. 24-25)

### **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' Hearing Summary and testimony alleged that Respondent committed an IPV by trafficking FAP benefits. The allegations were consistent with an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) sent to Respondent as part of MDHHS' prehearing procedures.

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.<sup>1</sup>

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).

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>

MDHHS alleged that Respondent trafficked \$ [REDACTED] in FAP benefits. MDHHS presented various pieces of evidence to support the allegation.

MDHHS alleged that Respondent's purchase for \$ [REDACTED] in FAP benefits was suspicious in its amount and its details. At the time of purchase, Respondent was an ongoing FAP recipient of one person. MDHHS alleged that a \$ [REDACTED] FAP purchase is unusual for a person and suspicious for trafficking. Judicial notice will be taken that Respondent's transaction was unusual due to its amount.<sup>3</sup> In Respondent's defense, the amount of expenditure is primarily unusual because most FAP recipients do not have \$ [REDACTED] 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.

MDHHS presented the receipt from Respondent's large purchase. Items bought by Respondent included \$ [REDACTED] in seasoned salt, \$ [REDACTED] in garlic salt, \$ [REDACTED] in steak sauce, and \$ [REDACTED] in cayenne sauce. MDHHS testimony expressed the most suspicion over various candy items totaling over \$600. MDHHS hypothesized that Respondent sold his FAP benefits and/or food items to a small grocer who would have a financial motive to purchase food items at a discounted price. The MDHHS hypothesis is possible but unsupported by any evidence.

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<sup>1</sup> See 7 CFR 253.8(a) and 7 CFR 273.16(c) for the corresponding federal regulations.

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

<sup>3</sup> See MRE 201.

MDHHS contended that photographs taken from Respondent's alleged trafficking transaction support a finding of trafficking. A photograph of the alleged trafficking transaction showed two persons making the alleged trafficking purchase; neither person resembled a photograph from Respondent taken from his driver's license.<sup>4</sup> This evidence was supportive that Respondent was not present for the purchase alleged to involve trafficking.

The testifying OIG agent asked Respondent about his presence during the transaction. The OIG agent testified that Respondent said that he was not present for the transaction and that his Bridge Card was stolen. If Respondent's Bridge Card was stolen, Respondent would not be responsible for an IPV. The OIG agent testified that Respondent's Bridge Card history indeed documented a report of a stolen Bridge Card on the date of the alleged trafficking transaction. Respondent's report of a stolen Bridge Card is consistent with a thief using Respondent's Bridge Card; Respondent's reporting is also consistent with a plan by Respondent to manufacture an excuse for a transaction suspicious for trafficking. After learning of Respondent's stolen Bridge Card status, the investigating agent asked Respondent how an alleged thief was able to obtain the PIN from Respondent's Bridge Card; Respondent reportedly could not provide an explanation. There was also no evidence that Respondent reported to the police that his Bridge Card was stolen.

MDHHS had reason to suspect that Respondent trafficked \$ [REDACTED] in FAP benefits. The reasons for suspicions were based on an unusual transaction, but not one that is prima facie prohibited. MDHHS presented support for their suspicions with evidence that Respondent was not present for the purchase. Respondent's explanation for his absence was corroborated. Though Respondent could not provide an investigator with an explanation for how a thief obtained Respondent's PIN, it is not Respondent's burden to prove. Given the evidence, it cannot be stated that MDHHS clearly and convincingly established that Respondent trafficked FAP benefits. Thus, it is found that MDHHS failed to establish that Respondent committed an IPV justifying imposing a disqualification.

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

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<sup>4</sup> Photographs of the transaction also showed a third person with his/her back to the camera. This person was standing in front of a cash register. MDHHS testimony reasonably concluded that the third person was a cashier and not one of the persons making the purchase.


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.<sup>5</sup>

It has already been found that MDHHS failed to establish trafficking by Respondent. Without a finding of trafficking, a finding allowing recoupment based on trafficking cannot follow. Thus, MDHHS will be denied the request to establish recoupment against Respondent.

### **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 trafficked FAP benefits. The MDHHS requests to establish an IPV disqualification and basis for recoupment of \$ [REDACTED] in FAP benefits are **DENIED**.

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

<sup>5</sup> See 7 CFR 273.18(a) for the corresponding federal regulation.

**DHHS**

LaClair Winbush  
MDHHS-Wayne-31-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
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MAHS