

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Respondent

Reg. No: 2008-19990

Issue No: [REDACTED]

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 27, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a hearing was held on May 27, 2009. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. Respondent was a recipient of FAP benefits during the period of May 1, 2003 through December 31, 2004.
2. Respondent was aware that clients may not trade or sell FAP benefits, use another person's FAP benefits or use their own FAP benefits to purchase anything other than food or seeds and plants to grow food.
3. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
4. Respondent signed an Assistance Application (DHS-1171) on October 9, 2003 and November 16, 2004, acknowledging her responsibilities. (Department Exhibit 10 – 25)
5. The respondent provided a statement on August 3, 2005, that stated she, her daughter, her mother and others had used her Bridge card at the [REDACTED] on [REDACTED] [REDACTED] and the [REDACTED] to exchange or trade for items that were not allowable purchases with FAP benefits (i.e. gas, phone cards, candy, toothpaste, detergent, bleach, etc.). (Department Exhibit 29)
6. This was respondent's first IPV of the FAP program.
7. During the alleged OI time period of May 1, 2003 through December 31, 2004, the respondent received \$3222 in FAP benefits that were used at [REDACTED] [REDACTED]). (Department Exhibit 6, 26 – 28)
5. A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED].

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal

regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department case workers.

Intentional Program Violation (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. PAM, Item 720, p. 1. The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation 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 the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7CFR 273.16(c).

The federal Food Stamp regulations read in part:

- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and

intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**

The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**

- . The total OI amount is less than \$1,000, **and**

.. The group has a previous IPV, **or**

- .. The alleged IPV involves FAP trafficking, **or**
- .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
- .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:


- . One year for the first IPV
- . Two years for the second IPV

- . Lifetime for the third IPV

FIP and FAP Only

- . Ten years for concurrent receipt of benefits (see PEM 203).
PAM 720, p. 13.

In this case, the department has established that respondent was aware that clients may not trade or sell FAP benefits, use another person's FAP benefits or use their own FAP benefits to purchase anything other than food or seeds and plants to grow food. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. The respondent completed applications for assistance on October 9, 2003 and November 16, 2004, acknowledging her responsibilities and that she understood she could not exchange/trade FAP benefits.

On August 3, 2005, the respondent provided a written statement to the Office of Inspector General, that indicated she, her mother, her daughter and others had used her Bridge card at the  to exchange or trade for items that were not allowable purchases with FAP benefits (i.e. gas, phone cards, candy, toothpaste, detergent, bleach, etc.). This is exchanging or trading FAP benefits for items not allowable under Federal law. The respondent was not prosecuted, although sufficient evidence was present. Instead, the matter was referred back to the Department of Human Services for recoupment.

Department policy indicates that the OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by a court decision, the individual's admission or documentation used to establish the trafficking determination. BAM 720. In this case, the department has provided a list of the FAP benefits utilized at the BP gas station the claimant admitted she exchanged benefits for non-purchasable items. The claimant is not present to

dispute any of the purchases as legitimate. Thus, this Administrative Law Judge does conclude that the purchases from [REDACTED] were trafficked.

Therefore, this Administrative Law Judge concludes that the department has shown, by clear and convincing evidence, that respondent committed a first intentional violation of the FAP program, by trafficking her FAP benefits, which resulted in a \$3222 overissuance from May, 2003 through December, 2004. Consequently, the department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP program violation.

Therefore it is ORDERED that:

(1) Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this Order.

(2) Respondent is responsible for full restitution of the \$3222 FAP caused by her Intentional Program Violation (IPV).

/s/

Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 29, 2010

Date Mailed: July 29, 2010

2008-19990/SLK

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

SLK [REDACTED]

cc:

[REDACTED]