STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Registration No: 201260794
Issue No: 3055
Case No: [redacted]
Hearing Date: October 4, 2012
Iosco County DHS

Administrative Law Judge: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and Mich Admin Code, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on October 4, 2012, at which Respondent appeared and provided testimony. The Department was represented by [redacted], a regulation agent with the Department's Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an over issuance of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.

2. Respondent was a recipient of FAP benefits at all times relevant to this hearing. (Department Exhibit C, pp. 1-2)

3. On August 18, 2011, the United States Department of Agriculture (USDA) notified the attorney for the [redacted] in [redacted], Michigan that the store has been permanently disqualified from participating in the Supplemental Nutrition Assistance Program (SNAP) as a result of the

USDA's July 7, 2011 findings that the owner of the [redacted] had engaged in the trafficking of SNAP benefits in violation of Section 271.2 of the SNAP regulations. Specifically, the USDA found that, during the months of December 2010, and January through May 2011, multiple electronic benefit transfer (EBT) transactions were made from individual benefit accounts in unusually short time frames, the majority or all of individual recipient benefits were exhausted in unusually short periods of time, and excessively large purchase transactions were made from recipient accounts. (Department Exhibit A, pp. 1-18)

4. During the period April 18, 2011 through August 12, 2011, Respondent's use or transfer of his [redacted] Bridge card at the [redacted] for purchases totaling [redacted] included multiple transactions in a short time period, even dollar transactions, and transactions in dollar amounts considered excessive for a store of its size and inventory, all of which are indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. (Department Exhibit B, pp. 1-9)

5. As a result of Respondent's fraudulent use or transfer of his FAP benefits, he received an over issuance of FAP benefits in the amount of [redacted] for the period April 1, 2011 through August 31, 2011. (Department Exhibit C, pp. 1-3)

6. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility under department policy not to engage in the fraudulent use or transfer of FAP benefits.

7. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with department policy.

CONCLUSIONS OF LAW

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq*., as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq*. The Department administers the FAP under MCL 400.10, *et seq*., and Mich Admin Code, R 400.3001 through R 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP for a period of one year.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. Trafficking is also the fraudulent use, transfer, alteration, acquisition, or possession of coupons, authorization cards, or access devices, and the redemption or presentation of a payment coupon known to be fraudulently obtained or transferred. BEM 203.

A suspected IPV is defined as an overissuance where:

- 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, p 1.]

An IPV is suspected by the Department when there is clear and convincing evidence that the client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. Likewise, an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p 1.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by the OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney; refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office;

- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and

- The total OI amount for the FAP is $1000 or more, or

- The total OI amount is less than $1000, and
  - The group has a previous IPV, or
  - The alleged IPV involves FAP trafficking, or
  - The alleged fraud involves concurrent receipt of assistance or
  - The alleged fraud is committed by a state/government employee. BAM 720, p 10.

The OI amount for trafficking-related IPVs is the value of the trafficked benefits as determined by: (i) the court decision; (ii) the individual's admission; or (iii) documentation used to establish the trafficking determination. BAM 720, p. 7.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9. When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time): one year for the first IPV; two years for the second IPV; and lifetime for the third IPV. BAM 720, p 13. Further, IPVs involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203. These FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine.

Dep't of Community Health, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Here, the OIG provided credible and sufficient testimony and other evidence establishing that, on August 18, 2011, the USDA permanently disqualified the [redacted] in [redacted], Michigan from participating in the Supplemental Nutrition Assistance Program (SNAP) as a result of the USDA's July 7, 2011 findings that the owner of the [redacted] had engaged in the trafficking of SNAP benefits in violation of Section 271.2 of the SNAP regulations. The OIG further established that, during the period April 18, 2011 through August 12, 2011, Respondent's use or transfer of his [redacted] Bridge card at the [redacted] for purchases totaling [redacted] included multiple transactions in a short time period, even dollar transactions, and transactions in dollar amounts considered excessive for a store of its size and inventory, all of which are indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. The OIG further established that, as a result of Respondent's fraudulent use or transfer of his FAP benefits, he received an over issuance of FAP benefits in the amount of [redacted] for the period April 1, 2011 through August 31, 2011.

At the October 4, 2012 hearing, Respondent testified that while he has never used his [redacted] Bridge card at the [redacted], he acknowledged that his wife did use his card there and likely did so for purchases of lottery tickets in the amount at issue [redacted]. Respondent further acknowledged that he accepted responsibility for his wife's actions in this regard.

Based on the credible testimony and other evidence presented, it is concluded that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FAP benefits in the amount of [redacted] for the period April 1, 2011 through August 31, 2011. Further, because this was Respondent's first IPV, the one-year disqualification period is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by trafficking FAP benefits.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of [redacted].
- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin to run IMMEDIATELY as of the date of this order.

/s/
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 5, 2012

Date Mailed: October 9, 2012

NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which he resides within 30 days of receipt of this decision and order.

SDS/cr

cc: [redacted]