

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

IN THE MATTER OF:



Reg. No.: 2012-61634
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: August 15, 2012
County: Wayne (41)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on August 15, 2012, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

- Participants on behalf of Respondent included: .
- Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

1. Did Respondent traffic benefits of the:

- Family Independence Program (FIP) Food Assistance Program (FAP)
 State Disability Assistance (SDA) Child Development and Care (CDC)
 Medical Assistance (MA) benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- Family Independence Program (FIP) Food Assistance Program (FAP)
 State Disability Assistance (SDA) Child Development and Care (CDC)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on June 20, 2012, to establish the trafficking of benefits received by Respondent and that as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the period of May, 2011 through February, 2012.
4. Respondent was was not aware that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is May, 2011, through February, 2012.
7. Respondent did did not; traffic FAP benefits in the amount of \$1,536.72 under the FIP FAP SDA CDC MA program.
8. The Department has has not established that Respondent committed an IPV.
9. This was Respondent's first second third IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the

Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, Rule 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, Rule 400.5001 through Rule 400.5015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700.

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.

IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

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.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor,
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. Department of Human Services, Bridges Policy Glossary (BPG) (April 1, 2012), p 45.

The issue in this case is not the scope of the definition of trafficking under the Department policy; the allegations raised by the Department against Respondent are sufficient to establish that the alleged conduct falls within the definition of trafficking. Rather, the issue is whether the evidence presented by the Department was sufficient to establish that Respondent committed the activities alleged by the Department.

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving certain program 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. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

In this case, the Department alleges that Respondent trafficked his FAP benefits [REDACTED] in Melvindale ([REDACTED]).

In support of its allegation, the Department relies on the fact that an investigation of [REDACTED] by the United States Department of Agriculture (USDA) and federal Office of Inspector General concluded that [REDACTED] was trafficking benefits, resulting in a pending criminal complaint in federal court. As of the date of this hearing, the criminal matter involving [REDACTED] was unresolved.

At the hearing, the Department presented evidence that, during the course of the investigation, the owner of [REDACTED] had admitted that he was involved in trafficking FAP benefits. There was also testimony that former [REDACTED] customers had admitted that they had trafficked FAP benefits at [REDACTED]. Statements made by third parties offered in evidence to prove the truth of the matter asserted are hearsay and generally inadmissible in civil proceedings. MRE 801; MRE 802. Although an administrative law judge may be more lenient in deciding what evidence may be presented, administrative hearings are subject to the same rules used in circuit court to the extent these rules are practical in the case being heard. BAM 600 (August 1, 2012), p 28. In cases involving IPV allegations, the burden on the Department is to establish by clear and convincing evidence that the client committed the IPV. 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. Thus, the weight of hearsay testimony admitted during the course of an administrative hearing is weighted accordingly.

Additionally, the OIG agent testified that he had been contacted by the respondent and that the respondent stated that he had received cash for his food benefits. This contact with the respondent is not delineated by date, what questions were asked by either party during the conversation, nor does it provide an answer to what amount of his FAP benefits, if any, were in fact used to receive cash instead of food.

The OIG agent does recount that the respondent stated that "he would receive approximately \$135.00 to \$150.00 in cash for \$200.00, worth of food stamps.

Thus the issues, given the testimonial evidence provided by the department, are:

1. What amount of FAP benefits were trafficked and what amount should be recouped.
2. What the respondent was told, by the department, or what questions were asked.
3. What statements were made by the OIG agent.
- 4.. Did the respondent ask any questions?
5. When did the conversation take place?
6. How does the stated admission by the store owner as to his involvement in the trafficking of FAP benefits attach to this respondent?

FAP Trafficking

The OI amount for trafficking -related IPV is the value of the trafficked benefits as determined by:

The court decision.

The individual's admission.

Documentation used to establish the trafficking determination. (BAM 720, p. 7).

In the instant case, the OIG agent testifies that the respondent admitted trafficking FAP benefits, but the OI amount is not specified. This ALJ finds that the department's testimony does not rise to the level of clear and convincing to create a clear and firm belief that the proposition is true.

There can be no recoupment without the OI amount delineated.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent did did not commit an IPV.
2. Respondent did did not; traffic benefits in the amount of \$1,536.72 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to delete the OI and cease any recoupment action.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ _____ in accordance with Department policy.

The Department is ORDERED to reduce the OI to _____ for the period _____, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



Michael J. Bennane
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 10, 2012

Date Mailed: September 10, 2012

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.

MJB/cl

cc:

[REDACTED]

Wayne County DHS (41)

[REDACTED]

M.

Bennane