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

## IN THE MATTER OF:

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Reg. No.: 201264685

Issue No.:

3052

Case No.: Hearing Date:

September 5, 2012

County: Wayne (41)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

## **HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

an he De	his 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 saring. After due notice, a telephone hearing was held on September 5, 2012, from etroit, Michigan. The Department was represented by the Office of Inspector General (OIG).					
	Participants on behalf of Respondent included:					
pu	Respondent did not appear at the hearing and it was held in Respondent's absence irsuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 0.3187(5).					
	<u>ISSUES</u>					
1.	Did Respondent receive an overissuance (OI) of					
	☐ Family Independence Program (FIP) ☐ State Disability Assistance (SDA) ☐ Medical Assistance (MA) ☐ Food Assistance Program (FAP) ☐ Child Development and Care (CDC)					
	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 July 23, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.						
2.	The OIG $\boxtimes$ has $\square$ has not requested that Respondent be disqualified from receiving program benefits.						
3.	Respondent was a recipient of $\square$ FIP $\boxtimes$ FAP $\square$ SDA $\square$ CDC $\square$ MA benefits during the period of January 2010 through October 2011.						
4.	Respondent $\boxtimes$ was $\square$ was not aware that 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 June 1, 2009 through October 31, 2011.						
7.	During the alleged fraud period, the OIG alleges that Respondent trafficked \$5204.60 in $\square$ FIP $\boxtimes$ FAP $\square$ SDA $\square$ CDC $\square$ MA benefits.						
8.	Respondent  did  did not receive an OI in the amount of \$5204.60 under the FIP FAP  SDA  CDC  MA program.						
9.	The Department $\square$ has $\boxtimes$ has not established that Respondent committed an IPV.						
10. A notice of hearing was mailed to Respondent at the last known address and $\square$ was $\boxtimes$ was not returned by the US Post Office as undeliverable.							

# **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Program Reference Tables (PRT).

☐ 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 Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.
Moderated 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, <i>et seq.</i> , and Mich Admin Code, R 400.3001 through R 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, <i>et seq.</i> , and Mich Admin Code, R 400.3151 through R 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 Mich Admin Code, R 400.5001 through R 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.

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. [BEM 720 (August 1, 2012), p 10.]

## Intentional Program Violation

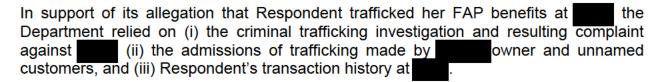
Suspected IPV means an overissuance (OI) exists for which all three of the following conditions exist:

- 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. [BAM 720, p 1 (emphasis in original).]

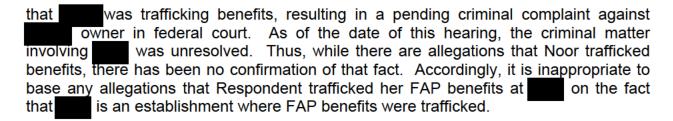
An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1.

The Department must establish an IPV by clear and convincing evidence. BAM 720, 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.

In this case, the Department alleges that Respondent trafficked her FAP benefits at 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. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (October 1, 2011). The Department has also referenced the definitions of trafficking from MCL 750.300a of the Michigan Penal Code and from 7 CFR § 273.16(c)(2) (2012). While the definition of trafficking from a criminal statute is not appropriate in an administrative hearing, it is noted that the definitions provided in both MCL 750.300a and 7 CFR § 273.16(c)(2) are similar to those in BEM 203 and in the BPG. Further, the issue in this case is not whether the definition of trafficking in the Department policy is broad enough to encompass Respondent's alleged activities. Rather, the issue is whether clear and convincing evidence established the allegations brought by the Department against Respondent.



The Department presented evidence that an investigation of by the United States Department of Agriculture (USDA) and federal Office of Inspector General concluded



At the hearing, the Department also presented evidence that, during the course of the , the owner of admitted that he was involved in investigation against trafficking FAP benefits. There was also testimony that former admitted that they had trafficked FAP benefits at Statements made by others offered into evidence to prove the truth of the matter asserted are hearsay and are generally inadmissible in a trial or hearing. MRE 801; MRE 802. Administrative hearings are subject to the same rules used in circuit court to the extent these rules are practical in the case being heard although an adminstrative law judge may be more lenient in deciding what evidence may be presented. BAM 600 (August 1, 2012), p 28. In this case, statements by owner and former customers regarding trafficking are hearsay and have limited, if any, evidentiary value. especially true in this case where evidence that third parties may have engaged in trafficking at is not dispositive of whether Respondent engaged in trafficking, particularly where no one identified Respondent as having trafficked her FAP benefits at and Respondent has not admitted she trafficked her FAP benefits at

The only remaining evidence presented by the Department to establish Respondent's trafficking was her FAP transaction history at The Department contended that Respondent's \$5204.60 in FAP transactions at between June 2009 and October 2011 were not supported by the stock of eligible food items sold at . However the Department did not present any evidence that Respondent's purchases at not legitimate food purchases or that her transactions were otherwise fraudulent. Respondent was not prohibited from spending her FAP benefits at any establishment which sold food items and was licensed to engage in FAP transactions. Respondent's substantial transactions at during the alleged fraud period may be suspicious, without more they fail to establish by clear and convincing evidence that she Thus, the Department has failed to establish that trafficked her FAP benefits. Respondent committed an IPV with respect to her FAP benefits.

#### Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving 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, p 12.

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 (October 1, 2009), p 2. 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, p 13.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification under the FAP program.

## Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1.

The OI amount for trafficking-related IPVs 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, p 7.

At the hearing, the Department alleged that Respondent trafficked \$5204.60 of her FAP benefits between June 1, 2009 and October 31, 2011. However, as discussed above, the Department failed to establish that Respondent trafficked her FAP benefits. Thus, it is not entitled to recoup any FAP benefits in this case.

## **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 $\square$ did $\boxtimes$	did not commit an I	PV.					
2.	Respondent  did  \$5204.60 from the following							
The Department is ORDERED to  initiate recoupment procedures for the amount of \$\infty\$ in accordance with the Department policy.								
	reduce the OI to	for the period	, in acco	ordance with	n Dep	partment pol	icy.	

Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

# 201264685/ACE

Date Signed: <u>9/20/12</u>

Date Mailed: 9/20/12

**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.

# ACE/hw

CC:

