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

IN THE MATTER OF:

[redacted]

Reg. No.: 201264714
Issue No.: 3052
Case No.: [redacted]
Hearing Date: November 14, 2012
County: Wayne (41)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 November 14, 2012, from Detroit, Michigan. The Department was represented by [redacted], Regulation Agent 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 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)
   ☐ State Disability Assistance (SDA)
   ☒ Food Assistance Program (FAP)
   ☐ Child Development and Care (CDC)?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing reques t on July 23, 2012 to establish an OI of benefits received by Respondent as a re sult of Responden t having allegedly committed an IPV.

2. The OIG ☒ has ☐ has not requested that Resp ondent be dis qualified fr om receiving program benefits.

3. Respondent was a rec ipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefit s during the period at issue.

4. Respondent ☒ was ☐ 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 m ental 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 March 1, 2011 to February 29, 2012.

7. During the alleged fraud period, the OIG alleges that Respondent trafficked $1432.69 in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits.

8. Respondent ☐ did ☒ did not receive an OI in the amount of $1432.69 under the ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA program.

9. The Department ☐ has ☒ has not established that Respondent committed an 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 Department of Human Service s Bridges Administrative Manual (BAM), the Bridges Eligibility M anual (BEM), and the Referenc e Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Serv ices Progr am 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.

☒ 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 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, *et seq*., 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.]

Subsequent to the scheduling of the current hearing and prior to the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. Department policy dictates that when correspondence sent to Respondent concerning an intentional program violation (IPV) is returned as undeliverable, the hearing cannot proceed with respect to any program other than Food Assistance Program (FAP). BAM 720, p 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

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 his FAP benefits at Noor Fruit Market in Melvindale ("Noor"). 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), p 2. 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.

In support of its allegation that Respondent trafficked his FAP benefits at Noor, the Department relied on (i) the criminal trafficking investigation and resulting complaint against Noor, (ii) the admissions of trafficking made by Noor's owner and unnamed customers, and (iii) Respondent's transaction history at Noor.

The Department presented evidence that an investigation of Noor by the United States Department of Agriculture (USDA) and federal Office of Inspector General concluded that Noor was trafficking benefits, resulting in a pending criminal complaint against Noor's owner in federal court. As of the date of this hearing, the criminal matter involving Noor was unresolved. Thus, while there are allegations that Noor trafficked benefits, there has been no confirmation of that fact. Accordingly, it is inappropriate to base any allegations that Respondent trafficked his FAP benefits at Noor on the fact that Noor is an establishment where FAP benefits were trafficked.

At the hearing, the Department also presented evidence that, during the course of the investigation against Noor, the owner of Noor admitted that he was involved in trafficking FAP benefits and that former Noor customers had admitted that they had trafficked FAP benefits at Noor. 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. BAM 600 (August 1, 2012), p 28. In this case, statements by Noor's owner and former customers regarding trafficking activity at Noor are hearsay and have limited, if any, evidentiary value in this case. Firstly, the Department's testimony concerning statements by Noor's owner and customers involve persons who are not parties to the instant proceeding. Also, the statements were not made to the OIG agent who testified at the hearing. And, finally, evidence that third parties may have engaged in trafficking at Noor is not dispositive of whether Respondent engaged in trafficking, particularly where no one identified Respondent as having trafficked his FAP benefits at Noor and Respondent has not admitted he trafficked his FAP benefits at Noor.

The only remaining evidence presented by the Department to establish Respondent's trafficking was his FAP transaction history at Noor. The Department contended that Respondent's $1432.69 in FAP transactions at Noor between March 1, 2011 and Feburary 29, 2012, were not supported by the stock of eligible food items sold at Noor. However, there was no clear and convincing evidence that the stock of eligible food at Noor could not support Respondent's purchases at the store. While Respondent's transaction history shows that Respondent's purchases at Noor were substantially greater than his purchases at other establishments, evidence of his significant transactions at Noor, without more, fail to establish by clear and convincing evidence that Respondent trafficked his FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV with respect to his 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 $1432.69 of his FAP benefits between March 1, 2011 through February 29, 2012. However, as discussed above, the Department failed to establish that Respondent trafficked his 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 ☐ did ☒ did not commit an IPV.

2. Respondent ☐ did ☒ did not receive an OI of program benefits in the amount of $1432.69 from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to

☒ delete the OI and cease any recoupment action.

☐ initiate recoupment procedures for the amount of $ in accordance with Department policy.

☐ reduce the OI to for the period , in accordance with Department policy.

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

Date Signed: January 3, 2013
Date Mailed: January 3, 2013

NOTICE: The law pr ovides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court fo r the county in which he/she lives.

ACE/cl

cc: [redacted]