

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

**IN THE MATTER OF:**



Reg. No.: 2012-67776  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: December 10, 2013  
County: Wayne 19

**ADMINISTRATIVE LAW JUDGE:** Dale Malewska

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 10, 2013 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

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 400.3178(5).

**ISSUES**

1. Did Respondent receive an over-issuance (OI) of  Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving  Food Assistance Program (FAP)?

**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 August 2, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG  has requested that the Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of  FAP benefits issued by the Department.
4. Respondent  was aware of the responsibility to promptly report all changes within 10 days and not engage in fraudulent trafficking of FAP 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 it is considering the fraud period is July 2010 through March 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in  FAP benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in  FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's  first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and  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), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) 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 Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- 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 is \$ [REDACTED] or more, or
- the total OI amount is less than \$ [REDACTED] and
  - the group has a previous IPV, or
  - the alleged IPV involves FAP trafficking, or
  - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
  - the alleged fraud is committed by a state/government employee.

BAM 720 (7-1-2013), p. 12.

### **Intentional Program Violation**

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 reporting responsibilities.

BAM 700 (7-1-2013), p. 6; BAM 720, p. 1.

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

An IPV requires that the Department establish by 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, p. 1; *see also* 7 CFR 273(e)(6). 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 OIG witness [REDACTED] provided credible, sufficient, un rebutted testimony and other credible evidence to establish that in February 2012 a joint USDA-OIG investigation determined that the [REDACTED] was involved in FAP trafficking. The store had limited staple food inventory and SNAP merchandise to support the redemptions submitted by the vendor on a monthly basis. Such redemptions included multiple transactions in a short period

of time with high dollar amounts and/or repetitive dollar amounts with transactions occurring in close proximity by hour or date. As a result, the USDA-OIG determined that the Noor Fruit Market was being used as a front for FAP trafficking.

Between the dates of July 2010 and March 2012 the Respondent [REDACTED] was responsible for participating in 23 unauthorized transactions involving the misuse of her EBT card. The OIG established misuse of the Respondent's EBT totaling \$ [REDACTED] over-issuance of FAP benefits.

Supported by persuasive documentary evidence the OIG demonstrated the above referenced investigation as well as the vendor's disqualification from the SNAP program. The store in question had minimal food selection – this being largely a store dedicated to that sale of cigarettes, alcohol, paper products, personal hygiene items and other non-SNAP items such as "...barbeque grills and a full size clothes drier." See Testimony of Vitous. The vendor engaged in EBT financing/credit and limited transaction action per customer total to approximately \$ [REDACTED] per transaction – although he would engage in serial or repeated transactions.

The Respondent's transactions at the vendor's place of business demonstrated a repetitive pattern of high dollar transactions on the same day or in seriatim.

The OIG testimony was supported by her persuasive documentary evidence. See Department's Exhibit #1 – throughout.

Based on the credible testimony and the documentary evidence, it is concluded that the OIG established, under a clear and convincing standard, that Respondent committed an IPV in this matter – resulting in OI of FAP \$ [REDACTED] for the period of July 2010 through March 202012. The Respondent's first IPV violation - a one year disqualification is appropriate.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

**Over-issuance**

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

In this case the OIG established with clear and convincing evidence an OI in the amount of \$ [REDACTED]

**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, if any, concludes that:

1. Respondent  did  did not commit an IPV by clear and convincing evidence.
2. Respondent  did  did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s)  FIP  FAP  SDA  CDC  MA.

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

It is FURTHER ORDERED that Respondent be disqualified from  FAP for a period of  12 months.  24 months.  lifetime.



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Dale Malewska  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 2/10/14

Date Mailed: 2/11/14

**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.

DM/tb

cc:

