

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

IN THE MATTER OF:



Reg. No.: 201272402
Issue No.: 3052
Case No.:
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 , 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

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |
| <input type="checkbox"/> 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

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> 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 August 14, 2012 to establish an OI of benefits received by Respondent 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 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 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 January 1, 2010 through May 31, 2012.
7. During the alleged fraud period, the OIG alleges that Respondent trafficked \$3719.74 in FIP FAP SDA CDC MA benefits.
8. Respondent did did not receive an OI in the amount of \$3719.74 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 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.

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.]

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 [REDACTED]. 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.

To establish that Respondent trafficked her FAP benefits at [REDACTED] the Department first established that [REDACTED] was an establishment that trafficked FAP benefits. The Department testified that, although criminal proceedings against [REDACTED] owner remained unresolved as of the hearing date, in May 2012 the United States Department of Agriculture (USDA) determined in an administrative proceeding that [REDACTED] was an establishment that had engaged in trafficking. As a result, [REDACTED] status as a FAP retailer was revoked, and [REDACTED] was permanently disqualified from accepting and processing Electronic Benefit Transfer (EBT) transactions, which are used to process FAP benefits. Thus, [REDACTED] is an establishment that trafficked FAP benefits.

The Department contended that Respondent's FAP transaction history at [REDACTED] in light of the limited stock of eligible food in [REDACTED] the high volume transactions at [REDACTED] just prior to Respondent's and the lack of scanning equipment at [REDACTED] supported a finding that she trafficked her benefits at [REDACTED].

The Department established that Respondent received monthly FAP benefits of \$200. Although Respondent's FAP transaction history before June 2010 showed that she frequented several large established grocery store chains and spent most of her FAP benefits at these stores, once she started using her FAP benefits at [REDACTED] in June 2010, and continuing the subsequent twenty months through February 2012, she used her FAP benefits almost entirely at [REDACTED]. During the 21 months between June 10, 2010 and February 7, 2012, during which Respondent used her FAP benefits at [REDACTED] all the

transactions at stores other than [REDACTED] were for less than \$15 except for three (one for \$16.29, one for \$31.60 and the third for \$38.51). In March 2012, after Respondent stopped frequenting [REDACTED] she began again using her FAP benefits at large grocery store chains again.

Respondent's transaction history also shows that in 17 of the 21 months during which Respondent used her FAP benefits at [REDACTED] she frequented [REDACTED] twice a month, usually within days, and her two transactions during each month totalled between \$150 and \$200 per month. In two of the remaining months (March 2011 and May 2011), Respondent had single monthly transactions at [REDACTED] each of about \$200. The Department presented credible testimony that some of Respondent's transactions were at the end of a series of high-volume transactions at [REDACTED] (i) in the ten minutes preceding Respondent's January 6, 2012 \$130 transaction at Noor, Noor conducted four FAP transactions totaling \$670, and (ii) in the six minutes preceding Respondent's July 5, 2011 \$117 FAP transaction at [REDACTED] [REDACTED] conducted two other FAP transactions totaling \$368. The Department contended that Noor did not have the infrastructure to support Respondent's transactions in light of the preceding transactions, pointing out that [REDACTED] did not have a scanner, requiring that all purchases made at the store be keyed in. The Department also testified that Respondent's high-volume purchases were not supported by the stock of eligible food items, particularly in light of the transactions preceding Respondent's, and pointed out that the photographs introduced into evidence showed all the stock of food items in the store, which was limited to shelves containing jarred pickled items, sauces, salad dressings, candy, and ramen noodle boxes; coolers with carbonated beverages (and alcohol, a non-food item); a shopping cart full of expired boxed goods; and a few bins of onions and potatoes.

While each of the foregoing facts may not individually establish Respondent's trafficking, the totality of the circumstances, particularly in light of the evidence establishing Noor as a trafficking establishment, was sufficient to show by clear and convincing evidence that Respondent trafficked her FAP benefits at [REDACTED]

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 satisfied its burden of showing that Respondent committed a first IPV of the FAP program by trafficking FAP benefits. Therefore, Respondent is subject to a one-year FAP disqualification.

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 IPV 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. The documentation used to establish Respondent's trafficking in this case was Respondent's FAP transaction history at [REDACTED]. This document shows \$3719.74 in FAP transactions by Respondent at Noor between June 2010 and May 2012. Thus, the Department is entitled to recoup \$3719.74.

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 \$3719.74 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 \$3719.74 in accordance with Department policy.
- 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.



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

Date Signed: January 14, 2013

Date Mailed: January 14, 2013

2012-72402/ACE

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/cl

cc:

