

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201278960
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: November 28, 2012
County: Wayne (49)

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 28, 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

- | | |
|--|---|
| <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 September 20, 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 relevant periods at issue.
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 July 1, 2009 through August 30, 2011.
7. During the alleged fraud period, the OIG alleges that Respondent trafficked \$3169.47 in FIP FAP SDA CDC MA benefits.
8. Respondent did did not receive an OI in the amount of \$3169.47 under the FIP FAP SDA CDC MA program.
9. The Department has has not established that Respondent committed an IPV.
10. This was Respondent's first second third alleged IPV.
11. 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), 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 Reference Schedules Manual (RFS).

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 overis suance (OI) exis ts for which all t hree of the following conditions exist:

- The client **intentionally** failed to report information **or intentionall y** gave incomplete or inaccurate informati on needed to make a correct benefit determination, **and**
- The client was c learly and correctly in structed 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 respons ibilities. [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 convinc ing 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 alleges that Responden t committed an IPV of her FAP benefits because she trafficked \$3169.47 of her FAP benefits at [REDACTED] [REDACTED] [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 c oupons, authorization cards, or access devices, or (ii) r edeeming or pres enting for pay ment coupons k nown to be fraudulently obtained or transferred. BEM 203 (October 1, 2011), p 2.

The Department credibly testif ied that [REDACTED] [REDACTED] was found in administrative hearings before the United St ates Depa rtment of Agriculture (USD A) to have trafficked FAP benefits and had its authorization to accept FAP benefits revoked. To support a trafficking case against Respondent, the D epartment must establish, by clear an d convincing evidence, that *Respondent* engaged in trafficking when she us ed her F AP benefits at [REDACTED].

In this cas e, the Department alleged that Respondent bought non- food items with her FAP benefits at [REDACTED]. FAP benefits can be used to buy eligible fo od at any authorized retail food store. BEM 100 (October 1, 2012), p 2. Eligible food includes any food or food product intended for human cons umption (except alcoholic beverages, tobacco, and foods prepared for immediate consumption). BEM 100, p 2.

At the hearing, the OIG agent credibly testified that she had spoken to Respondent prior to the hearing and Respondent informed her that she would si gn and return the repayment agreement. Although Res pondent di d not admit to trafficking in her conversation with the agent, her statement agreei ng to sign the repayment, which was contrary to her pecuniary and pr oprietary interest and would s ubject her to civil and criminal liability, was admissible as a st atement against interest made by a declarant

who was notified of the hearing and offered the opportunity to counter it. MRE 803(a)(5) and (b)(3). Although no signed repayment agreement has been received, Respondent's statement, coupled with her unusual FAP transaction history at [REDACTED], which showed more than \$50 of FAP transactions in a single day on more than twenty occasions, with single-day FAP transactions nearly at or over \$100 on five occasions, and showed other dates with multiple FAP transactions at [REDACTED] in a single day, and the fact that [REDACTED] is a trafficking establishment were sufficient to establish, 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 has satisfied its burden of showing that Respondent committed a first-time FAP IPV. Therefore, Respondent is subject to a one-year 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 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.

At the hearing, the Department alleged that Respondent trafficked \$3169.47 of her FAP benefits between July 1, 2009 through August 30, 2011. The documentation used to establish Respondent's trafficking in this case was Respondent's FAP transaction history at [REDACTED]. This document shows \$3169.47 in FAP transactions by Respondent at [REDACTED] between July 1, 2009 and August 31, 2011. Thus, the Department is entitled to recoup \$3169.47.

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 \$3169.47 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 \$3169.47 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 7, 2013

Date Mailed: January 7, 2013

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:

