

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-72395
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: March 27, 2013
County: Wayne (82-15)

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 March 27, 2013, from Detroit, Michigan. The Department was represented by [REDACTED].

Participants on behalf of Respondent included: Respondent.

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 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 January 1, 2010, through May 31, 2012.
7. During the alleged fraud period, the OIG alleges that Respondent trafficked \$4,896.28 in FIP FAP SDA CDC MA benefits.
8. This was Respondent's first second third alleged IPV.
9. 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 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 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 (February 1, 2013), 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.

The Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked \$4,896.28 of 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 (January 1, 2009, and October 1, 2011), p. 2.

The Department credibly testified that [REDACTED] was found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had its authorization to accept FAP benefits permanently revoked on May 15, 2012. To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at [REDACTED].

Respondent was present and participated in the hearing. While she denied receiving cash for her FAP benefits or using her benefits to purchase tobacco or alcohol, she admitted that she purchased cleaning supplies and other non-food items using her FAP benefits. Food assistance benefits can be used at an authorized retail food store to buy only eligible food, which is defined, in relevant part, as any food or food product intended for human consumption (other than alcoholic beverages, tobacco, and foods prepared for immediate consumption) or seeds and plants to grow food for personal consumption. BEM 100 (December 1, 2011), pp 2-3. Respondent's testimony that she used her FAP benefits at [REDACTED] to purchase items that were not eligible food established, by clear and convincing evidence, that she trafficked her FAP benefits at [REDACTED]. Thus, the Department established its case that Respondent committed an IPV of 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 OI 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 an IPV by trafficking her FAP benefits. Because this was Respondent's first IPV, she is subject to a one-year disqualification under the FAP program. BEM 720, pp. 13, 14.

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, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store, which can be established through circumstantial evidence. BAM 720, p. 7.

The Department alleged that Respondent trafficked \$4,896.28 of her FAP benefits from January 1, 2010, through May 31, 2012. At the hearing, the Department agreed that any transaction less than \$50 would constitute a reasonable transaction at an establishment such as [REDACTED] and agreed that those amounts could be removed from the amount sought to be recouped. A review of Respondent's transaction history at [REDACTED] shows that Respondent spent \$64.88 on January 23, 2011, \$68.81 on June 16, 2011, and \$70.34 on November 28, 2011. These expenses, which hover around the \$50 target, are also excluded from the calculation of the OI amount. The removal of all these expenses reduces the OI amount to \$4,607.65.

Respondent's remaining FAP transactions at [REDACTED] shown on the FAP transaction history reflect suspicious activity: (i) several high-volume transactions on consecutive days (for example, Respondent spent more than \$100 each day between October 10, 2010, and October 14, 2010, for a total of \$579.53 in four days and in the four days between November 9, 2010, and November 12, 2010, Respondent spent \$594.42) and (ii) over a third of all transactions within \$11 of \$200. This evidence, coupled with the Department's evidence of [REDACTED] limited food and capacity to handle such large transactions and the evidence that [REDACTED] was a trafficking establishment, was sufficient to establish that these remaining transactions involved trafficking. Respondent's testimony failed to counter the Department's evidence. Thus, the Department is entitled to recoup \$4,607.65.

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 \$4,607.65 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to reduce the OI to 4,607.65 for the period January 1, 2010, through May 31, 2012, 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: April 2, 2013

Date Mailed: April 3, 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/pf

cc:

