

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-73357
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: May 28, 2013
County: Wayne-17 County

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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 May 28, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED] 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 16, 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 FAP benefits from January 1, 2010 through June 20, 2012.
4. Between January 1, 2010 and June 20, 2012, the Claimant had multiple transactions over \$50 at [REDACTED] that combined totaled \$ [REDACTED]
5. Between January 2011 and February 2012, the average transaction at [REDACTED] was three times the average transaction amount to similar stores in the area.
6. In October of 2011, [REDACTED] redeemed a total of \$ [REDACTED] in FAP benefits.
7. In February 2012, [REDACTED] redeemed a total of \$ [REDACTED] in FAP benefits.
8. In February of 2012, the United States Department of Agriculture (USDA) executed a raid on [REDACTED] due to suspected FAP trafficking.
9. In March of 2012, [REDACTED] redeemed a total of \$ [REDACTED] in FAP benefits.
10. In April of 2012, [REDACTED] redeemed a total of \$ [REDACTED] in FAP benefits.
11. In May of 2012, [REDACTED] redeemed a total of \$ [REDACTED] in FAP benefits.
12. During the time periods in question, the inventory at [REDACTED] was limited. The inventory consisted of candy, chips, condiments, a few canned goods and a small bin of vegetables (potatoes and onions). There were no fresh meats.
13. During the time period in question, several transactions of over \$100 in value would take place within minutes of one another. The store only had one service counter with no conveyor belt.
14. Respondent was was not aware of the responsibility to report all changes within 10 days.
15. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
16. The Department's OIG indicates that the time period they are considering the fraud period is January 1, 2010 through June 20, 2012.
17. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan that were used at Noor.
18. Respondent did did not receive an OI in the amount of \$ [REDACTED] under the FIP FAP SDA CDC program.
19. The Department has has not established that Respondent committed an IPV.

20. This was Respondent's first second third IPV.

21. A notice of disqualification 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The FAP [formerly known as the Food Stamp (F S) 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 1999 AC, Rule 400.3001 through Rule 400.3015.

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

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 their reporting responsibilities.

IPV is suspected when there is 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. These FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

The length of the disqualification period depends on the dollar amount of the FAP benefits trafficked. A person is disqualified for life for a FAP trafficking conviction of \$500 or more. The standard IPV disqualification period is applied to FAP trafficking convictions less than \$500. BEM 203, p. 3. The Department did not seek the lifetime disqualification and only requested a 12 month disqualification.

Based on the credible testimony and other evidence presented, I have concluded the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter by trafficking their FAP benefits.

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 overissuance of program benefits in the amount of \$ [REDACTED] from the following program(s) FIP FAP SDA CDC.

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 receiving FAP benefits for 12 months.



Corey A. Arendt
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 29, 2013

Date Mailed: May 29, 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.

CAA/las

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