

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

IN THE MATTER OF:

[REDACTED]

Registration No: 20138647  
Issue No: 3055  
Case No: [REDACTED]  
Hearing Date: May 16, 2013  
Monroe County DHS

**Administrative Law Judge:** Suzanne D. Sonneborn

**HEARING DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and Mich Admin Code, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on May 16, 2013 at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10. The Department was represented by [REDACTED], an agent with the Department's Office of Inspector General (OIG).

**ISSUE**

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an over issuance of FAP benefits that the Department is entitled to recoup?

**FINDINGS OF FACT**

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV.
2. On January 9, 2012, the United States Department of Agriculture notified the owner of [REDACTED], located at [REDACTED], Michigan, that, pursuant to Sections 278.6(c) and 278.6(e)(1) of the Supplemental Nutrition Assistance Program (SNAP) regulations, his convenience store has been permanently disqualified from participating in SNAP as a result of the USDA's findings that, during the period April 1, 2011 through September 30, 2011, the owner had engaged in the

trafficking of SNAP benefits. (Department Exhibit 4; see also Department Exhibit 1, pp. 15-23)

3. During the period April 1, 2010 through October 1, 2011, Respondent's use of her Michigan Bridge card at [REDACTED], a convenience store which mainly sells tobacco related products, non-food paper products, and carbonated and noncarbonated beverages, for purchases totaling \$3,881.79 included multiple transactions in a short time period, and high dollar amounts that are excessive for a store of its size and inventory, both of which are indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. (Department Exhibit 2, pp. 24-29)
4. As a result of Respondent's buying or selling of FAP benefits for cash or consideration other than eligible food, she received an over issuance of FAP benefits in the amount of \$3,881.79 for the period April 1, 2010 through October 1, 2011. (Department Exhibit 3, pp. 30-32)

### **CONCLUSIONS OF LAW**

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by Respondent.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1. An over issuance is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive.

For FAP benefits, an over issuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1.

Trafficking is also the fraudulent use, transfer, alteration, acquisition, or possession of coupons, authorization cards, or access devices, and the redemption or presentation of a payment coupon known to be fraudulently obtained or transferred. BEM 203.

A suspected IPV is defined as an overissuance where:

- 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.]

An IPV is suspected by the Department when there is clear and convincing evidence that the client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. Likewise, an IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p 1.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

The over issuance amount for a trafficking-related IPV is the value of the trafficked benefits as determined by: (i) a court decision; (ii) the individual's admission; or (iii) 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. This can be established through circumstantial evidence. BAM 720, p. 7.

Suspected IPV matters are investigated by the OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney; refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office;

- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP is \$1000 or more, or
- The total OI amount is less than \$1000, and
  - The group has a previous IPV, or
  - The alleged IPV involves FAP trafficking, or
  - The alleged fraud involves concurrent receipt of assistance or
  - The alleged fraud is committed by a state/government employee. BAM 720, p 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9. When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time): one year for the first IPV; two years for the second IPV; and lifetime for the third IPV. BAM 720, p 13. Further, IPV's involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203. 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. BEM 203.

The standard IPV disqualification periods apply to FAP trafficking determinations made by the Michigan Administrative Hearing System or by the client signing a repay agreement. BAM 720, p. 14.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

In this case, at the May 16, 2013 disqualification hearing, the OIG provided credible, sufficient, undisputed testimony and other evidence establishing that, on January 9, 2012, the United States Department of Agriculture notified the owner of [REDACTED], located at [REDACTED], Michigan, that, pursuant to Sections 278.6(c) and 278.6(e)(1) of the Supplemental Nutrition Assistance Program (SNAP) regulations, his convenience store had been permanently disqualified from participating in SNAP as a result of the USDA's findings that, during the period April 1, 2011 through September 30, 2011, the owner had engaged in the trafficking of SNAP benefits. The OIG further established that, during the period April 1, 2010 through October 1, 2011, Respondent's use of her Michigan Bridge card at [REDACTED], a convenience store which mainly sells tobacco related products, non-food paper products, and carbonated and noncarbonated beverages, for purchases totaling \$3,881.79 included multiple transactions in a short time period, and high dollar amounts that are excessive for a store of its size and inventory, both of which are indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. The OIG further established that, as a result of Respondent's buying or selling of FAP benefits for cash or consideration other than eligible food, she received an over issuance of FAP benefits in the amount of \$3,881.79 for the period April 1, 2010 through October 1, 2011.

Based on the credible testimony and other evidence presented, it is concluded that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FAP benefits in the amount of \$3,881.79 for the period April 1, 2010 through October 1, 2011. Further, because this was Respondent's first IPV violation, the one-year disqualification period from the FAP program is appropriate.

### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by trafficking FAP benefits.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of her intentional program violation in the amount of \$3,881.79; and

- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

/s/

Suzanne D. Sonneborn  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: May 16, 2013

Date Mailed: May 17, 2013

**NOTICE:** Respondent may appeal this decision and order to the circuit court for the county in which she resides within 30 days of receipt of this decision and order.

SDS/aca

cc:

