

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201340346
Issue No: 3055
Case No: [REDACTED]
Hearing Date: July 17, 2013
Genesee County DHS (02)

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 July 17, 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, and Section 72 of the Michigan Administrative Procedures Act, MCL 24.271 *et al.* The Department was represented by [REDACTED], an agent with the Department's Office of Inspector General (OIG).

At the outset of the hearing, the Department requested that a summary default judgment be entered against Respondent based on Respondent's failure to appear. However, neither the Michigan Administrative Procedures Act, nor the Michigan Administrative Code, nor the Department of Human Services Bridges Administrative Manual grants an administrative law judge the authority to impose a default judgment against a party for a failure to appear. Accordingly, the Department's request for a summary default judgment against Respondent is denied.

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. In August 2011, a federal investigation by agents with the United States Department of Agriculture's Office of Inspector General (USDA-OIG) revealed that [REDACTED], located at [REDACTED] [REDACTED], Michigan, had inadequate store inventory and merchandise to satisfy the monthly food stamp redemptions being reported, which redemptions indicated multiple transactions in a short time period, high dollar and even dollar transactions. As result, the USDA-OIG determined that [REDACTED] was being used as a front for a FAP-trafficking operation. (Department Exhibit 4, pp. 29-50; Department Exhibit 5, pp. 51-60; Department Exhibit 7, p. 80)
3. Between February 2009 and July 2011, [REDACTED] processed fraudulent food stamps for cash exchanges. The average monthly food stamp redemption amount for other convenience stores in the area of [REDACTED] was \$5,479.00. [REDACTED]'s average monthly food stamp redemption amount for the same time period was \$26,798.00. (Department Exhibit 7, p.80)
4. On April 24, 2012, [REDACTED] entered into a plea agreement, whereby acknowledging that he and the owner of [REDACTED] processed fraudulent food stamp transactions in exchange for cash. Mr. [REDACTED] further acknowledged that he would identify and procure potential cash recipients and then assist the recipient in phoning in the fraudulent transaction and then later reimburse the individuals with cash payments. (Department Exhibit 6, pp. 61-79)
5. On August 17, 2012, the owner of [REDACTED], [REDACTED], was found guilty by a federal jury of conspiracy to commit food stamp fraud. Evidence introduced during the trial established that Mr. [REDACTED] redeemed more than \$750,000.00 in food stamp benefits from February 2009 to July 2011, \$612,000.00 of which was obtained utilizing fraudulent "food stamps-for-cash" exchanges. (Department Exhibit 7, p. 80)
6. During the period April 1, 2010 through July 31, 2011, Respondent's use of his Michigan Bridge card at [REDACTED] for purchases totaling \$2,239.52 included 10 transactions for an even dollar amount and a high dollar amount that was 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. 18-27; Department Exhibit 3, p. 28)
7. As a result of Respondent's buying or selling of FAP benefits for cash or consideration other than eligible food, he received an over issuance of FAP benefits in the amount of \$2,239.52 for the period February 1, 2010 through July 31, 2011. (Department Exhibit 1, pp. 8-17)

8. This was Respondent's second determined IPV inasmuch as, pursuant to a Hearing Decision and Order issued by Administrative Law Judge Kevin Scully on May 17, 2013 in the matter of [REDACTED], 201328916, Respondent was found to have committed a first IPV, ordered to reimburse the Department in the amount of \$1,800.00, and disqualified from the FAP program for a period of one year.
9. A notice of disqualification hearing was mailed to Respondent at his last known address and was returned by the United States Postal Service as undeliverable.

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.

A suspected IPV is defined as an over issuance 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.

Clients who commit an IPV are disqualified for a standard qualification 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 a 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 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.

In this case, at the July 17, 2013 disqualification hearing, the OIG provided credible, sufficient, undisputed testimony and other evidence establishing that, in August 2011, a federal investigation by agents with the United States Department of Agriculture's Office of Inspector General (USDA-OIG) revealed that [REDACTED], located at [REDACTED], Michigan, had inadequate store inventory and merchandise to satisfy the monthly food stamp redemptions being reported, which redemptions indicated multiple transactions in a short time period, high dollar and even dollar transactions. As result, the USDA-OIG determined that [REDACTED] was being used as a front for a FAP-trafficking operation. The OIG further established that, between February 2009 and July 2011, [REDACTED] processed fraudulent food stamps for cash exchanges. The average monthly food stamp redemption amount for other convenience stores in the area of [REDACTED] was \$5,479.00. [REDACTED]'s average monthly food stamp redemption amount for the same time period was \$26,798.00.

The OIG further established that, on April 24, 2012, [REDACTED] entered into a plea agreement, whereby acknowledging that he and the owner of [REDACTED] processed fraudulent food stamp transactions in exchange for cash. Mr. [REDACTED] further acknowledged that he would identify and procure potential cash recipients and then assist the recipient in phoning in the fraudulent transaction and then later reimburse the individuals with cash payments. The OIG further established that, on August 17, 2012, the owner of [REDACTED], [REDACTED], was found guilty by a federal jury of conspiracy to commit food stamp fraud. Evidence introduced during the trial established that Mr. [REDACTED] redeemed more than \$750,000.00 in food stamp benefits from February 2009 to July 2011, \$612,000.00 of which was obtained utilizing fraudulent "food stamps-for-cash" exchanges.

The OIG further established that, during the period April 1, 2010 through July 31, 2011, Respondent's use of his Michigan Bridge card at [REDACTED] for purchases totaling \$2,239.52 included 10 transactions for an even dollar amount and a high dollar amount that was 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. Finally, the OIG established that, as a result of Respondent's buying or selling of FAP benefits for cash or consideration other than eligible food, he received an over issuance of FAP benefits in the amount of \$2,239.52 for the period February 1, 2010 through July 31, 2011.

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).

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 \$2,239.52 for the period February 1, 2010 through July 31, 2011. Further, because this was Respondent's second IPV violation, the two-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 his intentional program violation in the amount of \$2,239.52; and
- Respondent is personally disqualified from participation in the FAP for a period of two years. 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: July 18, 2013

Date Mailed: July 22, 2013

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

SDS/aca

cc:

