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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-40314
Issue No.: 3055
Case No.: [redacted]
Hearing Date: 8/13/13
County: Genesee #06

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

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 8/13/13 from Lansing, Michigan. The Department was represented by Regulation Agent [redacted] 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 400.3178(5).

ISSUE

Did Respondent commit an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds the facts to be as stated in the Summary. The Administrative Law Judge further finds as material fact:

1. On 4/08/13, the Department's OIG filed a Request for Disqualification Hearing to establish that Respondent trafficked FAP benefits.

2. The OIG has requested that Respondent be disqualified from receiving FAP benefits for one year.

3. Respondent was a recipient of FAP benefits during the following period 8/01/09-12/31/10.

4. Respondent was aware of the responsibility to properly use his/her FAP benefits and not engage in trafficking.

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 trafficking period is 8/01/09-12/31/10.

7. During the alleged trafficking period, Respondent was issued $[redacted] in FAP benefits from the State of Michigan.

8. On 8/17/12, [redacted], the owner/employee of [redacted] (hereinafter identified as 'the store'), was convicted of conspiracy to commit food stamp fraud in the [redacted].

9. At the [redacted], respondent's EBT card was charged for alleged fraudulent transactions totaling $[redacted] from 8/15/09-12/10/10. Department Exhibit #18

10. The average Food Assistance Program Transaction for a store of this type in July 2011 did not exceed $[redacted] (Department Exhibit #39)

11. The raid was a culmination of a federal investigation which determined that the store was a front for FAP trafficking, and all EBT purchases at the store were considered fraudulent because the store had limited inventory of qualified food stock and storage space and one checkout counter with no shopping carts or electronic scanning devices. Store employees admitted to their involvement in FAP trafficking and have been convicted in federal court.

12. This was Respondent's first Intentional Program Violation.

13. The Michigan Administrative Hearing System (MAHS), Administrative Tribunal for the Department of Human Services, issued a Notice of Hearing. The Notice of Hearing was sent to the Respondent's last known address on record with the Department and was returned as undelivered.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the

appropriateness of that decision. BAM 600. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

An intentional program violation is defined as:

> 7 CFR § 273.16
>
> (c) Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally:
>
> (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
>
> (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (12/1/2011) p. 1.

Policy also speaks to the standard of proof that is required in order to determine whether an IPV has occurred:

> An 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 (12/1/2011) p. 1.

See Also: 7 CFR 273.16.

> (6) Criteria for determining intentional Program violation. The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

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 $[redacted] or more, or
- the total overissuance amount is less than $[redacted] 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.

The overissuance amount for trafficking-related IPVs is the value of the trafficked benefits as determined by:

- The court decision
- The individual's admission
- Documentation used to establish the trafficking determination.

BAM 720 (12/1/2011), p. 7.

A court or hearing decision that finds a client trafficked FAP benefits disqualifies that client from receiving certain 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.

The Department's witness testified that after a search of the Department database, no change of address for Respondent was found, and further, there was testimony that based on information and belief; no other address existed for Respondent.

It is noted that Respondent has the responsibility to provide current contact information to the Department. This Administrative Law Judge is satisfied that Department and MAHS exercised due diligence in attempting to provide proper notice of intent to disqualify Respondent from receiving FAP benefits for the period of time as specified herein. Subsequent to the mailing of the Notice of Hearing, Respondent has neither requested an adjournment nor has an adjournment been granted. Respondent failed to appear at this hearing.

The Michigan Administrative Code Rule 400.901 provides that this hearing

> " shall be conducted in accordance with the Administrative Procedures Act of 1969, Act 306 of 1969, as amended, being section 24.201 *et seq*. of the Michigan Compiled Laws."

MCL 24.272 provides in pertinent part:

> (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.
>
> MCL 24. 272(1).

In the present matter, the Department exercised due diligence in attempting to provide Respondent proper notice and no adjournment was granted. Therefore, pursuant to Section 72, the hearing proceeded in Respondent's absence.

Pertinent department policy dictates:

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 1999 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, DHS 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.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance 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 $[redacted] or more, or
- the total overissuance amount is less than $[redacted] 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.

A court or hearing decision that finds a client committed 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the over-issuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. 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.

The OI amount for trafficking-related IPVs is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- 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, page 17.

In the instant case, the Department presented its proofs in support of the claim of IPV and trafficking of FAP benefits and established that respondent was responsible for the use of his/her FAP benefits at the store. The store used for and its employees convicted of FAP benefit trafficking. The respondent was a client identified during the investigation

with transaction histories which were greater than $[redacted] at the store; amounts which exceed the normal dollar transaction of a store that size with the limited number of items available for sale. Client was never in the store; all benefits were charged to the EBT card through a key in system.

This Administrative Law Judge determines that the department OIG regulation agent has established that the Respondent received an over issuance of FAP benefits in the amount of $[redacted] for unauthorized transactions from 8/15/09-12/10/10. Respondent was responsible for the transactions as s/he was the authorized user of the EBT card. The respondent did knowingly use, transfer, acquire, alter, purchase, possess, present for redemption or transport food stamps or access devices other than authorized by the food stamp act of 1977, 7U.S.C 2011 to 2030. The department OIG has established by the necessary competent, substantial and material evidence on the record that claimant committed an Intentional Program Violation for the Food Assistance Program for which respondent must be disqualified.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, by clear and convincing evidence and for the reasons stated on the record, concludes that:

1. Respondent did commit an IPV by trafficking FAP benefits.

2. As a result of the determination that Respondent trafficked FAP benefits, FAP benefits in the amount of $[redacted] were over-issued to Respondent during the period 8/15/09-12/10/10 which the department must recoup.

3. 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 a period of 12 months

/s/

Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 8/14/13

Date Mailed: 8/15/13

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.

LYL/tb

cc: [redacted]