

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2013-52508
Issue No.: 3055
Case No.: ██████████
Hearing Date: September 16, 2013
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

**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 September 16, 2013 from Detroit, Michigan. The Department was represented by Agent Dustin Drabek of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Ahmed Taha and Zaineb Hussein, his interpreter.

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

- Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (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

- Family Independence Program (FIP) Food Assistance Program (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 June 10, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having trafficked program benefits and, as such, allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits for a period of one year.
3. Respondent was a recipient of FAP FIP MA benefits during the period of January 1, 2011 through November 1, 2012, the fraud period in question.
4. During the alleged fraud period, Respondent was issued \$1132 in FAP FIP MA benefits that the Department alleges was trafficked.
5. This was Respondent's first second third alleged IPV.
6. 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation 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). 7 CFR 273.16(c).
 - (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.

7 CFR 273.16(c)(6).

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 \$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, or
- 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 OI 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.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, pg. 1 (2011).

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the FAP program. Thus, the Department must not only prove that Respondent committed an act, but that there was intent to commit the act.

In the current case, the Administrative Law Judge is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent trafficked their FAP benefits.

First, the undersigned notes that intentionality is a specific requirement under the Code of Federal Regulations, contrary to the Department's arguments. The Code of Federal Regulations makes no distinction as to whether the IPV at hand be for a failure to report information or FAP trafficking; a clear and convincing show of intentionality is required. Therefore, it is possible to unintentionally traffic FAP benefits; in such a situation, a finding of IPV would be inappropriate.

Additionally, it should be noted that the burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent more than

likely trafficked or that there was FAP trafficking occurring at the store in question. The Department must prove in a clear and convincing manner that Respondent trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent intentionally committed an act that would constitute trafficking.

The Department has failed to prove that claimant intentionally trafficked their FAP benefits.

First, the undersigned must note that the actions of the store are not at issue in the current case and the store in question is not the subject of this administrative hearing; while there is clear evidence, including confessions that the store in question engaged in the trafficking of FAP benefits, the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

The Department's case relies on four key pieces of evidence: that the store in question admitted to trafficking FAP benefits; that the store in question had very little actual food stock; that Respondent shopped at that store and had purchasing patterns that were, in the experience of the investigating agent, consistent with FAP trafficking; and that the Respondent admitted at hearing to buying food that was ineligible for purchase with FAP benefits.

With regard to the store itself, the undersigned is prepared to say that the Department showed clearly and convincingly that the store trafficked FAP benefits. The evidence presented painted a clear picture of FAP trafficking, and even included a helpful confession wherein the store owner admitted to three different types of FAP benefit trafficking.

Unfortunately, the store is not the respondent in the current case.

In the current case, with this Respondent, the Department has only proven that Respondent shopped at the store in question. While it is true that the store only carried limited food goods, limited food goods does not equal zero food goods. The undersigned cannot find that merely shopping at a store that was an FAP trafficker constitutes actual trafficking, especially considering that the store in question did offer goods that could be purchased with FAP benefits. Furthermore, the Department was unable to define or prove exactly what constituted a limited selection of food goods; when asked, the Department could not definitively state how much in food goods were capable of being purchased at one time with FAP benefits.

Mere association is not clear and convincing evidence of malfeasance.

Make no mistake—the undersigned believes that, based on the trafficking patterns identified by the investigating agent, Respondent most likely trafficked FAP benefits. However, most likely is a threshold far below clear and convincing, and the undersigned

cannot hold a respondent guilty of an IPV for benefit trafficking on a probable occurrence. Trafficking patterns only raises the specter of trafficking and does not establish clear and convincing evidence of trafficking in and of itself.

The evidence in this case only shows that the store in question trafficked FAP benefits, and Respondent shopped at that store—nothing more. Without some sort of affirmative evidence that Respondent engaged in trafficking, no IPV can be found. The patterns identified by the investigating agent of the amounts spent at the store only raise the specter of trafficking and do nothing to actually show trafficking occurred.

Whether or not the respondent committed a trafficking offense is, at most, probable. Though the store in question has been permanently banned from participation in the FAP program for trafficking, the determination is not particularly relevant to the immediate question. IPV most definitely cannot be found for associating with an accused trafficker.

Finally, it should be noted that the respondent admitted under oath to buying ineligible FAP items at the store in question. However, respondent also testified that he was unaware that the items in question were ineligible for purchase.

The Administrative Law Judge finds this testimony credible, as the Department testified that no information was given at application or subsequent issuance of benefits as to what items are eligible for purchase. Given that the items in question were actual food products, and thus eligible for confusion with other food products that are eligible for purchase with FAP benefits, the undersigned cannot hold that the trafficking in question was intentional.

Furthermore, even though the respondent admits to unintentionally trafficking benefits, the undersigned cannot allow recoupment. The Department has failed to present evidence as to which of claimant's purchases were illegal under the FAP rules. As the only purchases that have been proven by clear and convincing evidence to be illegal under the rules are the purchases of prepared food admitted to by the respondent, the undersigned must be given evidence of the amount respondent has spent on prepared food. Unfortunately, the purchase list supplied by the Department makes no distinction as to which purchases consists of prepared food, and which purchases are benign. Therefore, without a specific finding into how much claimant actually trafficked in FAP benefits, the undersigned cannot order a specific recoupment amount.

The respondent also admitted to running a tab at the store in question. However, respondent testified that he paid this tab off in cash, and not FAP benefits, which would have been an illegal use of FAP benefits. The Department did not dispute claimant's testimony, and, absent the submission of evidence indicating that claimant was contained in the "tab book" operated by the store to keep track of those who paid off their tabs using FAP benefits, the undersigned must find the claimant's testimony credible.

The Administrative Law Judge, therefore, cannot say that the Department has proven their case by clear and convincing evidence and declines to find an IPV.

Furthermore, the undersigned cannot hold that the benefits sought to be recouped in this case, \$1132.00, were used for trafficking, as there is no evidence as to how much of the funds in question were used to buy impermissible items beyond the investigative report discussed above. As such, any recoupment in this case must be denied.

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 \$1132.00 from the following program(s) FAP FIP MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 9, 2013

Date Mailed: October 9, 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.

RJC/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]