

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-57115
Issue No.: 3055
Case No.: ██████████
Hearing Date: October 7, 2013
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on October 7, 2013 from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent 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 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 July 12, 2013, 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 FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
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 it is considering the fraud period is July 1, 2010, to July 31, 2011.
7. The Department alleges that Respondent trafficked \$925.39 in FIP FAP SDA CDC MA benefits.
8. This was Respondent's first second third alleged IPV.
9. 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3001 through R 400.3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs 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 (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (July 2013), p. 12.

In this case, the Department alleged that Respondent committed an IPV because she trafficked using her FAP benefits issued by the State of Michigan. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice and documents were returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 10. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

Intentional Program Violation

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 reporting responsibilities.

BAM 700 (July 2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked \$925.39 between July 1, 2010 to July 31, 2011.

BAM 700 defines trafficking as:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700, p. 2.

The Department argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as “Store”), where the United States Department of Agriculture (“USDA”) determined that the Store was engaged in food trafficking and ultimately led to the Store’s permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store has a limited supply of food, counter space, and has a large variety of household items where it is unlikely that someone would make regular and/or large purchases of food;
- over a period of time, Respondent regularly purchases food at Store using FAP benefits;

- Respondent admitted to the Department that she used her FAP benefits to purchase both food and household products at the Store in question;
- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area; and
- thus, Respondent trafficked FAP benefits

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking, which resulted in the Store's permanent disqualification from SNAP on October 13, 2011. See Exhibit 1.

Second, the Department argued that the Store has a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food. The Department testified that the Store sells non-food items including tobacco, health and beauty products, and a large variety of household items. Moreover, the Department testified that the area surrounding the Store is served by super stores, supermarkets, large grocery stores, all located within a half mile from the store. The Department infers that the Store did not have the food items or the physical means to support high dollar transactions.

Also, the Department presented pictures in an attempt to demonstrate the above description of the Store's layout. A review of the photos does demonstrate that the Store has a limited counter space and a large variety of household items. See Exhibit 1. But, the pictures also show available food items for purchase. See Exhibit 1.

The pictures presented by the Department do indicate somewhat that a person would have difficulty making large transactions because of the limited food supply and a large variety of household items which are not eligible for purchase with FAP benefits.

Third, on March 6, 2013, the testifying regulation agent stated that she spoke with Respondent by telephone. The agent testified that Respondent admitted that she used her FAP benefits to purchase both food and household products at the Store in question. No admission in writing and/or repayment documents were submitted from the Respondent was presented at the hearing.

Respondent's admission is an appropriate consideration in determining whether trafficking occurred. Respondent's statement was given directly to the testifying agent who credibly testified concerning the statement. Respondent's statement is not hearsay because it was an admission by party opponent (Michigan Rules of Evidence 801(d)(2)); for good measure, the statement also meets a hearsay exception a statement against interest by an unavailable declarant (Michigan Rules of Evidence 804 (b)(3)).

Fourth, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent's FAP transaction history, which showed that between July 27, 2010, to July 11, 2011, she spent \$925.39 of her FAP benefits at the

Store in 18 transactions. See Exhibit 1. The transaction purchases ranged as low as \$8.45 to as high as \$83.92. See Exhibit 1. The Department contends that FAP trafficking often involves large transactions which are not representative of the Store's typical FAP benefits purchases. Thus, stores engaged in benefit trafficking often break up larger transactions into smaller ones to hide the fraud. Moreover, the Department contends that transactions close in proximity often lead to FAP trafficking as well.

A review of the Respondent's transactions does indicate that a portion of the purchases were close in proximity. For example, on 1/7/2011, Respondent made purchases of \$71.96 and \$45.30 within five minutes of each other. See Exhibit 1. On 3/26/2011, Respondent made purchases of \$38.05 and \$6.35 within three minutes of each other. See Exhibit 1. On 5/11/2011, Respondent made purchases of \$83.92 and \$8.45. See Exhibit 1.

A review of the transactions also indicated that some of the purchases were large transactions. For example, on 11/6/2010, Respondent made a purchase for \$59.34. See Exhibit 1. On 2/12/2011, Respondent made a purchase for \$82.78. See Exhibit 1. On 4/10/2011, Respondent made a purchase of \$74.69. See Exhibit 1. Also, on 5/11/2011, Respondent made a purchase of \$83.92.

It should be noted that the Department provided Respondent's history of EBT purchases at the Store in question. The Department testified that it selected the amounts that are in excess of the Store's average sales. Moreover, the Department testified that it did not select the lesser amounts because it did consider Respondent's testimony that she also did purchase food at the Store.

Finally, the Department showed the Store's average transactions were greater than transactions at comparable establishments.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving her FAP benefits. First, the evidence that the Store had limited counter space was not persuasive as there was available food items that Respondent could purchase. Second, the pictures presented by the Department do indicate somewhat that a person would have difficulty making large transactions because of the limited food supply and small counter space. However, the pictures also showed food products that are intended for consumption.

Nevertheless, Respondent's admission that she purchased household items coupled with Respondent's FAP transaction history; presented persuasive evidence that Respondent committed an IPV involving her FAP benefits. The agent credibly testified that on March 6, 2013, the Respondent admitted to the Department that she used her FAP benefits to purchase both food and household products at the Store in question.

Additionally, the Department did present several transactions that were suspicious. Several of the transactions were close in proximity and were broken-up into smaller amounts. For example, on 1/7/2011, Respondent made purchases of \$71.96 and

\$45.30 within five minutes of each other. See Exhibit 1. This is highly suspicious that a person could make such high dollar transactions within five minutes of each other. Also, on 3/26/2011, Respondent made purchases of \$38.05 and \$6.35 within three minutes of each other. See Exhibit 1. Also, a review of the transactions also indicated that some of the purchases were large transactions. For example, on 11/6/2010, Respondent made a purchase for \$59.34. See Exhibit 1. On 2/12/2011, Respondent made a purchase for \$82.78. See Exhibit 1. These transactions are suspicious as well because of the Store's food supply, limited counter space, and large household items supply. There are several more examples of this pattern and it continues through July 11, 2011. See Exhibit 1. The FAP transaction history and Respondent's admission to the Department is persuasive evidence to conclude that the Respondent is involved in trafficking.

In summary, an IPV requires that the Department establish by 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, p. 1 (emphasis in original). The Department established by clear and convincing evidence that Respondent trafficked her FAP benefits at the Store. A review of the evidence presented transactions that were close in proximity and/or large transactions where the Respondent could not reasonably purchase food items for consumption. Thus, the Department has established that Respondent committed an IPV involving her FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), p. 2. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

For FAP trafficking, the OI amount for trafficking-related IPV 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, p. 8.

In this case, the Department's OIG indicates that the time period it is considering the fraud period is July 1, 2010, to July 31, 2011. The Department also alleges that Respondent trafficked \$925.39. As stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. The Department was able to prove that Respondent was involved in FAP trafficking. Thus, the Department has satisfied its burden of showing that Respondent did receive an OI of program benefits in the amount of \$925.39 in FAP benefits and an overissuance is present in this case.

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 by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$925.39 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$925.39 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 28, 2013

Date Mailed: October 28, 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.

EJF/cl

cc: [REDACTED]
[REDACTED]