

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20135622
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: August 8, 2013
County: Macomb

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on August 8, 2013. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. The Department was represented by [REDACTED].

ISSUE

Whether Respondent engaged in trafficking Food Assistance Program (FAP) benefits in the amount of [REDACTED]?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- (1) Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) On February 10, 2011, Respondent made 3 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED].
- (3) On February 13, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED].
- (4) On March 4, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED]. After this transaction Respondent's EBT balance was [REDACTED].

- (5) On March 11, 2011, Respondent made 5 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED].
- (6) On March 16, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED]. After this transaction Respondent's EBT balance was [REDACTED].
- (7) On March 17, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED]. After this transaction Respondent's EBT balance was [REDACTED].
- (8) On March 27, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED]. After this transaction Respondent's EBT balance was [REDACTED].
- (9) On April 18, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED]. After this transaction Respondent's EBT balance was [REDACTED].
- (10) On April 19, 2011, Respondent made 1 Electronic Benefit Transfer (EBT) card transactions at [REDACTED] totaling [REDACTED]. After this transaction Respondent's EBT balance was [REDACTED].
- (11) On May 10, 2011, the United States Department of Agriculture (USDA) surveyed [REDACTED] as part of an investigation into the questionable pattern of EBT transactions at the market. The investigation concluded that the inventory of the market made it unlikely that anyone would spend more than [REDACTED] in the market.
- (12) On October 10, 2012, the Michigan Department of Human Services Office of Inspector General sent Respondent an intentional program violation (IPV) packet.
- (13) On October 16, 2012, the Michigan Department of Human Services Office of Inspector General submitted the agency request for hearing of this case.

CONCLUSIONS OF LAW

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 1997 AACR 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of Food Assistance Program (FAP) trafficking and the Department has asked that Respondent be disqualified from receiving benefits.

Department policies provide the following guidance and are available on the internet through the Department's website.

**BPG GLOSSARY
TRAFFICKING**

The buying or selling of FAP benefits for cash or consideration other than eligible food.

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS

**DEPARTMENT POLICY
FIP, RAP, SDA, CDC and FAP**

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

Policy for IPV disqualifications and over-issuances is found in BAM 700 and 720.

**FAP TRAFFICKING
FAP**

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or 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 [REDACTED] or more. The standard IPV disqualification period is applied to FAP trafficking convictions less than [REDACTED]. See Disqualification in BAM 720.

A person is disqualified for life if convicted in court of trading FAP to acquire firearms, ammunition or explosives.

A person is disqualified if convicted in court of trading FAP in order to acquire illegal drugs. The disqualification period is two years for the first conviction. The second conviction results in a lifetime disqualification.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

PAM 700 explains OI discovery, OI types and standards of promptness. PAM 705 explains agency error and PAM 715 explains client error.

DEFINITIONS

All Programs

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 or CDC provider has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
 2. 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 combined is [REDACTED] or more, **or;**
 - The total OI amount is less than [REDACTED], **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.

Review of Respondent's EBT transactions at Cecil Market show an obvious pattern of determining her account balance and making transactions well beyond the value reasonably expected at a vendor such as the market. A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

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, finds that the Department has established by clear and convincing evidence that Respondent engaged in Food Assistance Program (FAP) trafficking in the amount of [REDACTED] which the Department is entitled to recoup. The Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2013).

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 08/26/2013

Date Mailed: 08/27/2013

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.

GFH/sw

cc:

[REDACTED]