

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.: 201359298  
Issue No.: [REDACTED]  
Case No.: [REDACTED]  
Hearing Date: October 16, 2013  
County: Saginaw

**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 October 16, 2013. Respondent did not appear. The record did contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. [REDACTED] represented the Department.

**ISSUE**

Whether Respondent engaged in trafficking Food Assistance Program (FAP) benefits on 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 June 8, 2010, Respondent's Electronic Benefit Transfer (EBT) card was used for a [REDACTED] purchase at [REDACTED] for the account of [REDACTED].
- (3) Between December 8, 2010 and March 11, 2011 Respondent's Food Assistance Program (FAP) electronic benefit card was used for transactions totaling [REDACTED] at [REDACTED]. Some of the transactions occurred after the stores reported hours of business.

- (4) On February 9, 2012, Respondent was incarcerated.
- (5) From February 27, 2012 through April 27, 2012, Respondent's Electronic Benefit Transfer (EBT) card was used to make purchases totaling [REDACTED].
- (6) On April 27, 2012, Respondent was still incarcerated.
- (7) On April 24, 2012, [REDACTED] signed a plea agreement to charges of conspiracy to commit the crime of felony food stamp fraud with the owner of [REDACTED]. In cooperation with [REDACTED], [REDACTED] made contact with food stamp recipients and exchanged [REDACTED] cash for each [REDACTED] of food stamp benefits charged by [REDACTED]. The charges at Mandingo were made by [REDACTED] calling [REDACTED] and providing the cashier the card number and PIN as well as the agreed amount of the transaction. [REDACTED] was engaged in the food stamp trafficking with [REDACTED] from September 2009 through July 2011.
- (8) On July 25, 2013, the 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 \$500 or more. The standard IPV disqualification period is applied to FAP trafficking convictions less than \$500. See Disqualification in BAM 720.

### **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.

**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.

**OVER-ISSUANCE PROCESSING**

**Recoupment Specialist Referral**

**FIP, SDA, CDC and FAP Only**

Bridges refers most client errors, CDC provider errors and suspected IPV to the RS. Use the DHS-4701, Over-issuance Referral, to refer manual OIs.

**OVER-ISSUANCE AMOUNT**

**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.

## **OIG RESPONSIBILITIES**

### **All Programs**

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

### **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.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained.

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/has not 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. This is Respondent's 1<sup>st</sup> Intentional Program Violation (IPV) of the Food Assistance Program (FAP). Respondent may be disqualified from receiving Food Assistance Program (FAP) benefits in accordance with Department policy.

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

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

Date Signed: 10/22/2013

Date Mailed: 10/23/2013

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]