

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

**IN THE MATTER OF:**



Reg. No.: 2013-50421  
Issue No.: 3052  
Case No.: [REDACTED]  
Hearing Date: October 14, 2013  
County: Wayne DHS (41)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (DHS), 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 14, 2013, from Detroit, Michigan. [REDACTED], Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. 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**

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an overissuance of benefits.

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing FAP benefit recipient.
2. Over the period of [REDACTED]/2011-[REDACTED]/2012, Respondent made 74 purchases from a store that was known to engage in FAP benefit trafficking.
3. The 74 FAP benefit transactions totaled \$4268.

4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$4268 in allegedly over-issued FAP benefits over the period of [REDACTED]/2011-[REDACTED]/2012.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 (8/2012), p. 3.

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. *Id.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

The Code of Federal Regulations defines an IPV. 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. 7 CFR 273.16 (c).

The hearing authority shall base the determination of intentional Program violation on **clear and convincing** (emphasis added) 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 (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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

DHS alleged that Respondent intentionally trafficked \$4268 in FAP benefits over the period of [REDACTED]/2011-[REDACTED]/2012. The evidence against Respondent was circumstantial. Generally, circumstantial evidence is less persuasive than direct evidence, however, at some point, the circumstantial evidence may accumulate to a clear and convincing case. The DHS argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (for purposes of this decision, it shall be known as “Store”) where it was administratively established that food trafficking was sufficiently rampant to result in Store’s loss of accepting FAP benefit purchases;
- Store has a limited supply of food where it is unlikely that anybody would make regular and/or large purchases of food;
- over a period of time, Respondent regularly purchased food at Store using FAP benefits;
- therefore, Respondent trafficked FAP benefits.

DHS presented a letter (Exhibits 1-2) dated [REDACTED]/13 from the United States Department of Agriculture. The letter verified that Store was suspended from processing FAP benefit transactions due to benefit trafficking.

DHS also presented a memorandum (Exhibits 3-4) summarizing an interview with Store’s owner. The most notable highlight was the owner’s statement that FAP trafficking occurred “at all the stores” and that if his store did not engage in trafficking, the customer would find another store that did.

DHS presented compelling evidence of FAP trafficking by Store. The question remains whether Respondent engaged in FAP trafficking.

DHS presented Respondent’s FAP purchase history (Exhibits 24-27) with Store. The history verified that Respondent spent \$4268.30 at Store from [REDACTED]/2011-[REDACTED]/2012. DHS contended that this was the amount of FAP benefits trafficked by Respondent. The history verified that Respondent made 74 transactions with Store over an approximate 24 month period.

DHS alleged that Respondent’s FAP benefit purchases at Store could not be justified by proper benefit transactions. One example cited by DHS was Respondent spent the following amounts: \$101.73 on [REDACTED]/11, \$117.08 on [REDACTED]/11 and \$149.80 on [REDACTED]/11. DHS alleged that Respondent’s larger transactions were likely attributable to paying on store credit or resulted in an exchange of cash for FAP benefits. DHS alleged that smaller transactions were likely attributable to hot food purchases, which are prohibited by federal regulations.

Over the alleged period of FAP trafficking, Respondent received monthly FAP benefit issuances ranging as low as \$1129 to a high of \$1352 (Exhibits 29-33). Based on FAP benefit maximum issuances (see RFT 260), Respondent was a member of a household of no less than eight persons. The relatively large household tends to verify a need for higher amount transactions. There was nothing obviously suspicious about the amounts or dates of Respondent’s purchases. The \$368.81 spent by Respondent over a 15-day

period, by itself, is not strikingly unusual, particularly for an eight-person or more household. The more compelling DHS argument was that Store's supply of FAP eligible food was so decrepit that all of Respondent's purchases were due to trafficking.

The testifying agent stated that he conducted over one hundred interviews of persons who made purchases from Store. He stated that he obtained over 40 recoupment agreements from clients who trafficked FAP benefits at Store. The evidence has significant value to show that Store engaged in FAP trafficking, but is of little probative value concerning Respondent.

The testifying regulation agent testified that Store did not provide carts or baskets. He contended it would be improbable for a person to routinely purchase over \$100 (Respondent had 14 such purchases) worth of food from a store without baskets or carts. Respondent's two largest purchases were \$242.47 on [REDACTED]/12 and \$272.45 on [REDACTED]/11.

The testifying regulation agent testified that Store did not have an optical scanner. Such evidence is mildly suggestive that Store did not intend to cater to persons making transactions involving dozens of items as one might find at a traditional grocery store, but again, is of little probative value in establishing benefit trafficking by Respondent.

The testifying agent presented various photos (Exhibits 5-22) of Store. DHS also presented layout (Exhibit 22) of Store. The photos were taken as part of the case against Store by the federal government. The photos appeared to show an empty refrigerator, an invoice, a bagful of receipts, several binders and a search warrant; the photos were not given any context and are not found to be relevant to establishing trafficking by Respondent.

DHS presented photos of nearly empty store shelves. If representative of the entire store, the photos made it less likely that anybody would make significant food purchases from Store; however, the photos were not given much context.

The entire DHS case hinges on determining the probability that a person would have made \$4268.30 in legitimate purchases from a store heavily engaged in FAP trafficking with a seemingly decrepit inventory of eligible food.

Respondent's purchases were too substantial in amounts and frequency from a store involved in FAP trafficking to be justified as made in the course of legitimate FAP purchases. Based on the presented evidence, it is found that Respondent engaged in FAP trafficking.

The standard disqualification period is used in all instances except when a court orders a different period. *Id.*, p. 13. DHS is to apply the following disqualification periods to recipients determined to have committed IPV: one year for the first IPV, two years for the second IPV and lifetime for the third IPV. *Id.* DHS established a basis for a one year disqualification against Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. The present case concerns an alleged OI of \$1401. Establishing whether DHS or Respondent was at fault for the OI is of no importance because DHS may seek to recoup the amount in either scenario.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

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 (8/2012), p. 7.

In the IPV analysis, it was found that Respondent trafficked FAP benefits at Store. Based on this finding, the relatively small food inventory available at Store and the fact that Store engaged in rampant FAP trafficking, it is more likely than not that all of Respondent's transactions at Store involved FAP benefit trafficking. Accordingly, DHS established an overissuance of \$4368.30.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an intentional program violation by FAP benefit trafficking and may impose a one year disqualification against Respondent. It is further found that DHS established an over-issuance against Respondent in the amount of \$4368.30.

The DHS hearing request is **AFFIRMED**.

*Christian Gardocki*

Christian Gardocki  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 11/8/2013

Date Mailed: 11/8/2013

**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.

CG/hw

cc:

