

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

IN THE MATTER OF:



Reg. No.: 201352521
Issue No.: 3055
Case No.:
Hearing Date: November 5, 2013
County: Wayne 18

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 November 5, 2013 from Lansing, 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 June 13, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has 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 aware of the responsibility to avoid trafficking of benefits as an unlawful act in violation of policy which could result in a disqualification from the receipt of future benefits and recoupment of already issued benefits.
5. Although he used an assistive device (cane) the 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 May 2010 through January 2012.
7. The Department alleges that Respondent trafficked \$ [REDACTED] 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 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 \$ [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.

BAM 720 (July 2013), p. 12.

In this case, the Department alleged that Respondent committed an IPV because he trafficked his FAP benefits issued by the State of Michigan. As of the date of scheduling the for the instant hearing, the Respondent's Notice of Hearing and companion documents were mailed to him through first class mail at the address identified by the Department as his last known address. The package was returned to the Department as "undeliverable - unable to forward by the United States Postal Service." 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. 12.

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. 7; 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 the Respondent committed an IPV of his FAP benefits because he trafficked \$ [REDACTED] between May 2010 and January 2012.

BAM 700 defines trafficking as follows:

- 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.

At hearing the Department OIG argued that the food store hereinafter [REDACTED] where the United States Department of Agriculture (USDA) determined that the [REDACTED] was engaged in food trafficking and ultimately led to their permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP).

The [REDACTED] had a limited supply of SNAP qualified foods or other food products – with the exception of snack chips and carbonated beverages and limited counter space where it was unlikely that someone would make large purchases of food products.

The [REDACTED] had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount of transactions than similar stores of the same size and area.

Over a period of time, Respondent regularly purchased tobacco products and exchanged his benefits for discounted cash using his FAP benefits; and thus, the Respondent was determined to have trafficked his FAP benefits.

The Department presented documentary evidence showing USDA evidence of trafficking which resulted in permanent SNAP disqualification for the SNAP vendor. See Exhibit #1.

Next, the Department argued that the business was, in essence, a tobacco store for commercial products or make-your own-products with assorted smoking paraphernalia on display and for sale. There was no fresh food, no fresh meat or packaged meat - only canned products. There was no fresh produce. The only dairy products carried consisted of a single serving size of milk. There as very limited staple foods and even the snack food was limited in quantities available and was placed behind the counter. There was only one POS device – no shopping carts with many non-food products.

Photographic evidence verified the above food descriptions as well the limited ability to transact larger food purchases owing to limited counter space and limited food supply.

Finally, the [REDACTED] did not have the capacity or stock to support transactions of up to \$ [REDACTED] in one single transaction. Obviously, the Respondent who walked to the [REDACTED] with the use of an assistive device, with no car or public transportation was trading benefits for discounted cash or purchasing prohibited items under the SNAP program – items he could carry in his pocket for the return walk home. See Testimony of OIG agent [REDACTED] and Exhibit 1 – throughout.

To establish trafficking the OIG agent testified that the Respondent grudgingly admitted to the scheme and then terminated his interview. However, the Respondent's transaction history demonstrated a repetitive pattern in a 3 (three) month period of three large [REDACTED] transactions leading to full or near full depletion of the beneficiary's FAP benefits.

On review, the Department has established that the Respondent committed an IPV involving his FAP benefits. There was persuasive evidence that the [REDACTED] did not function as a market for the purchase of approved and/or non-approved food items. This was a *tobacco* store – largely, and it was not accommodating to food purchasing beyond single item convenience items. The photographic evidence also shows limited stock available for consumption. The Respondents EBT transactions were correctly viewed as a suspicious - as there was no way the Respondent could carry SNAP approved food products in the amount he was alleged to be purchasing – based on the EBT history. I gave Exhibit 1 at page 14 significant weight on that issue.

An IPV requires that the Department establish by clear and convincing evidence that the beneficiary has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. [BAM 720] The Department has established by clear and convincing evidence that Respondent trafficked his FAP benefits at the [REDACTED]. A review of the evidence showed larger transactions resulting in an amount of product the

Respondent could not carry without assistance or assistive device – such as a grocery cart.

Moreover, the Department presented credible evidence that purchases of over \$ [REDACTED] would be considered trafficking owing to their limited stock and supply train. See Exhibit 1 – throughout.

Thus, the Department has established that Respondent committed an IPV his FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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 met its burden of proof to establish that Respondent committed an IPV concerning FAP benefits. Thus, the Respondent is subject to 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 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.

See BAM 720 at page 8

In this case, the Department's OIG testified that the time period in question is [REDACTED] through [REDACTED]. He also alleges that the Respondent trafficked \$ [REDACTED] which the Department also alleged comprised purchases made at the \$ [REDACTED] level or greater. See Exhibit 1, page 14

As a stated in the above review the Department has established that the Respondent committed an IPV involving his FAP benefits. The Department was able to prove FAP trafficking. Accordingly, the Department has satisfied its burden of proof by demonstrating that the Respondent did receive an over issuance of program benefits in the amount of \$ [REDACTED] comprised of purchases made at the [REDACTED] between the dates of [REDACTED]. His OI from the FAP program being \$ [REDACTED]

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 commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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.

/s/ _____
Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 11/19/13

Date Mailed: 11/19/13

2013-52521/DM

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.

DM/tb

cc:

