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.: 2013-62627
Issue No.: 3055
Case No.: [redacted]
Hearing Date: November 13, 2013
County: Wayne 49

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 November 13, 2013. Respondent did not appear. The record did contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. The Department was represented by Office of Inspector General (OIG) Regulation Agent, [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. Between March 1, 2012 and May 31, 2012, Respondent's FAP electronic benefit card was used for transactions totaling $[redacted] at [redacted].

3. [redacted] has a limited staple food stock, but does sell prepared, hot foods which are not eligible for purchase with food stamps. [redacted] is located 12 miles from the Respondent's address.

4. On June 19, 2012, [redacted] was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP) for food stamp trafficking.

5. Between [redacted], Respondent engaged in Food Assistance Program (FAP) trafficking by charging $[redacted] The transaction occurring on [redacted], which is the entire monthly allotment the Respondent was entitled to.

6. On August 5, 2013, Respondent was sent an Intentional Program Violation (IPV) packet.

7. On August 6, 2013, the OIG 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 AACS R 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.

Policy for IPV disqualifications and overissuances 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.

BAM 700 explains OI discovery, OI types and standards of promptness. BAM 705 explains agency error and BAM 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.

OVER-ISSUANCE AMOUNT

FAP Trafficking The OI amount for trafficking-related IPVs is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- Documentation used to establish the trafficking determination.

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 $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.

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.

In this case, the Claimant spent large sums of his allotment on only three occasions at the [redacted]. The Claimant's last purchase at the [redacted] was for $[redacted] which is his entire monthly FAP allotment for May and that purchase was made early in the month on [redacted]. Based on the very limited staple food stock items at the [redacted] and the distance between the [redacted] and the Respondent's address, the Administrative Law Judge determines that the Department has established by clear and convincing evidence that the Claimant was trafficking in food stamps.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, determines 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.

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

/s/
Susanne E. Harris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/19/13

Date Mailed: 11/20/13

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.

SEH/tb

cc: [redacted]