

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

IN THE MATTER OF:

██████████
██████████
████████████████████

Reg. No.: 2013-63965
Issue No.: 3052
Case No.: ██████████
Hearing Date: October 28, 2013
County: Wayne (82-35)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 28, 2013 from Detroit, Michigan. The Department was represented by ██████████
████████████████████

Participants on behalf of Respondent included: .

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 the Department establish, by clear and convincing evidence, that Respondent committed 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 August 16, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by trafficking FAP benefits.
2. The OIG has has not 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 was not aware of the responsibility to use FAP benefits for lawful purchases.
5. 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 they are considering the fraud period is July 1, 2009, through May 31, 2011 ("fraud period").
7. During the fraud period, the Department alleges that Respondent trafficked \$4029 in FIP FAP SDA CDC MA benefits issued by the State of Michigan.
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 was not 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 \$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.

BAM 720 (February 2013), p. 10.

In this case, the Department alleged that Respondent committed an IPV because he trafficked his FAP benefits. After the IPV hearing was scheduled and before it was held, the Notice of Hearing and accompanying documents mailed to Respondent via first class mail at the address identified by the Department as the last known and most recent address were returned by the United States Postal Service with a handwritten notation "return to sender." At the hearing, the Department testified that Respondent had an active benefits case and the address to which the documents were sent was the current address on file with the Department. Department policy dictates that when correspondence sent to Respondent concerning an IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than FAP. BAM 720, p. 10. Because the Department testified that the address used by MAHS to notify Respondent of the hearing was his most current address, the hearing properly proceeded with respect to the alleged FAP IPV.

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. 6; 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 Respondent committed an IPV because he trafficked \$4,029 of his FAP benefits at [REDACTED]. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.. BAM 700, pp. 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2013), p. 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (June 2013), p. 2.

The Department presented evidence that [REDACTED] was found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had its authorization to accept FAP benefits revoked as of August 18, 2011. To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when he used his FAP benefits at [REDACTED]

To establish that Respondent trafficked his benefits, the Department presented Respondent's benefit summary inquiry showing that Respondent received \$200 in monthly FAP benefits, and Respondent's FAP transactions history at [REDACTED] showing his 27 transactions at the establishment between July 9, 2009, and May 10, 2011. The Department removed the six transactions for amounts less than \$50, acknowledging that transactions for less than \$50 could be valid, non-trafficking transactions. Of the remaining 21 transactions totaling \$4,029, 17 transactions (or 80%)

were within dollars of \$200, most within pennies of \$200. An additional single transaction on May 20, 2013, was for \$399.87. The Department established that Respondent used almost all of his monthly FAP allotment at [REDACTED] between July 1, 2009, and May 31, 2011.

The Department testified that the [REDACTED] had limited food items eligible for FAP purchase, no optical scanner, and limited check out and counter space. The Department's evidence, coupled with the administrative finding that [REDACTED] is a trafficking establishment and is permanently disqualified from redeeming FAP benefits, was sufficient to establish, by clear and convincing evidence, that Respondent trafficked his FAP benefits at the store.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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 (May 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 satisfied its burden of showing that Respondent committed an IPV by trafficking FAP benefits. Because this was Respondent's first IPV, he is subject to a one-year disqualification under the FAP program. BEM 720, pp. 13, 14.

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. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by a court decision, the individual's admission, or 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, which can be established through circumstantial evidence. BAM 720, p. 7.

The FAP transaction history the Department presented showed that, once transactions under \$50 were removed, Respondent had \$4,029 in FAP transactions at [REDACTED]. This evidence was used to establish that Respondent trafficked \$4,029 of his FAP benefits at [REDACTED] between July 1, 2009, and May 31, 2011, and the Department is entitled to repayment of that amount.

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 did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$4,029 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$4,029 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months. 24 months. lifetime.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 12, 2013

Date Mailed: November 13, 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.

ACE/pf

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