

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

IN THE MATTER OF:

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Reg. No.: 2013-64181
Issue No.: 3055
Case No.: ██████████
Hearing Date: October 21, 2013
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 21, 2013 from Detroit, 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 August 20, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
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 that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
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 it is considering the fraud period is July 1, 2009 to December 31, 2009.
7. The Department alleges that Respondent trafficked \$1,442.00 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 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 (July 2013), p. 12.

In this case, the Department alleged that Respondent committed an IPV because he trafficked using his FAP benefits issued by the State of Michigan. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice and documents were returned by the United States Postal Service as undeliverable. 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. Thus, 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. 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 Respondent committed an IPV of his FAP benefits because he trafficked \$1,442.00 between July 1, 2009 and December 31, 2009.

BAM 700 defines trafficking as:

- 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.

BAM 700, p. 2.

The Department argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as “Store”), where the United States Department of Agriculture (“USDA”) determined that the Store was engaged in food trafficking and ultimately led to the Store’s permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store has a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food;
- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area;

- over a period of time, Respondent regularly purchases food at Store using FAP benefits; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking, which resulted in the Store's permanent disqualification from SNAP on August 18, 2011. See Exhibit 1.

Second, the Department argued that the Store has a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food. The Department testified that the Store was stocked with dairy products, breads, cereals, deli meats, frozen pizza, hot baked pizza, and fried chicken. The Department also testified that the stock is typical of convenience stores and included prepackaged convenience foods/snacks, crackers/cookies, canned foods, and baby formula which were expired. Additionally, the Department testified that there is limited counter space, no optical scanners, no carts/baskets, and a limited food inventory. The Department infers that the Store did not have the food items or the physical means to support high dollar transactions.

Also, the Department presented pictures in an attempt to demonstrate the above description of the Store's layout. A review of the photos does demonstrate that the Store has a small checkout area. See Exhibit 1. The pictures also shows non-food items, a food area, a deli area, packaged meat, liquor area, and the back of the store. See Exhibit 1.

The pictures presented by the Department do indicate somewhat that a person would have difficulty making large transactions because of the limited food supply and small counter space.

Third, the Department showed the Store's average transactions between August 2008 and July 2011. See Exhibit 1. The Store's average transactions began at \$8.74 in August 2008, but the average amount rose later in time. For example, in November 2009 (during the alleged fraud time in this case), the Store's average transaction was \$35.44. See Exhibit 1. The Department's exhibit indicated that between August 2008 and July 2011, the Store's average transaction amount was \$29.12 See Exhibit 1. Moreover, the Department also showed the Store's average transactions were greater than transactions at comparable establishments. See Exhibit 1.

Based on the above information, the Department testified it is unlikely that someone would make purchases of food in the Store for more than \$50.

Finally, to establish that Respondent trafficked his FAP benefits at the Store, the Department relied on Respondent's FAP transaction history, which showed that between July 2, 2009 and January 15, 2010, he spent \$1,862.86 of his FAP benefits at the Store. See Exhibit 1. However, the Department testified that it only considered amounts at or above \$50 during the time period at the Store to be trafficking. Thus, the

Department did not consider purchases such as \$6.00 on August 31, 2009 to be trafficking. See Exhibit 1. The Department testified that it considered \$1,442 of it to be trafficking for the purchases made between July 2009 and December 2009.

Additionally, the Department contends that FAP trafficking often involves unlikely transactions which are not representative of the Store's typical FAP benefits purchases.

A review of the Respondent's transactions does indicate that a large portion of the purchases were large transactions. For example, on July 9, 2009, Respondent made two purchases of \$81.14 and \$100. See Exhibit 1. On November 15, 2009, Respondent made a purchase of \$501.45. See Exhibit 1. On November 19, 2009, Respondent made two purchases of \$205.01 and \$71.62. See Exhibit 1. On November 25, 2009, Respondent made a purchase of \$128.29 and on November 27, 2009, he made a purchase of \$103.29. See Exhibit 1.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving his FAP benefits. First, the evidence that the Store had limited counter space was not persuasive as there was available food items that Respondent could purchase. Second, the pictures presented by the Department do indicate somewhat that a person would have difficulty making large transactions because of the limited food supply and small counter space. However, the pictures also showed food product that are intended for consumption.

Nevertheless, Respondent's main argument based on his FAP transaction history; presented persuasive evidence that Respondent committed an IPV involving his FAP benefits. The Department did present several transactions that were suspicious. The large transactions over \$50 were not representative of the Store's typical FAP benefits purchases. For example, on November 15, 2009, Respondent made a purchase of \$501.45. See Exhibit 1. This is highly suspicious that a person could make such high dollar transactions at this store. Moreover, on November 19, 2009, Respondent made two purchases of \$205.01 and \$71.62. See Exhibit 1. Again, these are highly suspicious as the Respondent had transactions totaling \$778 between November 15, 2009 and November 19, 2009. See Exhibit 1. There are several more examples of large transactions that Respondent conducted through the time period as stated above. The FAP transaction history the Department presented is persuasive to conclude that the Respondent is involved in trafficking.

In summary, 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). The Department established by clear and convincing evidence that Respondent trafficked his FAP benefits at the Store. A review of the evidence presented large transactions that the Respondent could not reasonably purchase food items for consumption. Moreover, the Department presented credible evidence that purchases of transactions over \$50 at the Store are considered to be trafficking due to the Store's limited supply of food, counter

space, and that the Store's average transactions were greater than transactions at comparable establishments. See Exhibit 1. Thus, the Department has established that Respondent committed an IPV involving 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a 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 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, p. 8.

In this case, the Department's OIG indicates that the time period it is considering the fraud period is July 1, 2009 to December 31, 2009. The Department also alleges that Respondent trafficked \$1,442, which the Department testified that the trafficked amount was only comprised of any purchases made at or above \$50.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving his FAP benefits. The Department was able to prove that

Respondent was involved in FAP trafficking. Thus, the Department has satisfied its burden of showing that Respondent did receive an OI of program benefits. However, a review of all amounts at or above \$50 did not result in a total trafficking amount of \$1,442. Instead, a review of the purchases resulted in a total amount of \$1,363, which is comprised of any purchases made at or above \$50 at the Store for the fraud period of July 1, 2009 to December 31, 2009. Thus, it is found that Respondent received an OI of program benefits in the amount of \$1,363 from the FAP program. See BAM 720, p. 8.

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 by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$1,363 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$1,363 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.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 6, 2013

Date Mailed: November 6, 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.

EJF/cl

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