

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

IN THE MATTER OF:



Reg. No.: 201315869
Issue No.: 3052
Case No.:
Hearing Date: February 27, 2013
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on February 27, 2013, from Detroit, Michigan. The Department was represented by Regulation Agent of the Office of Inspector General (OIG).

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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |
| <input type="checkbox"/> Medical Assistance (MA) | |

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> 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 November 30, 2012 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 during the relevant periods at issue.
4. Respondent was was not aware of the responsibility to 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 they are considering the fraud period is March 1, 2011 through September 30, 2011.
7. During the alleged fraud period, the OIG alleges that Respondent trafficked \$719 in FIP FAP SDA CDC MA benefits.
8. Respondent did did not receive an OI in the amount of \$719 under the FIP FAP SDA CDC MA program.
9. The Department has has not established that Respondent committed an IPV.
10. This was Respondent's first second third alleged IPV.
11. 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), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in

the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor,
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or

- the alleged fraud involves concurrent receipt of assistance,
- the alleged fraud is committed by a state/government employee. [BEM 720 (February 1, 2013), p 10.]

Subsequent to the scheduling of the current hearing and prior to the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. 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. Thus, the hearing proceeded with respect to the alleged FAP IPV.

Intentional Program Violation

Suspected IPV means an overissuance (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. [BAM 720, p 1 (emphasis in original).]

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1.

The Department must establish an IPV by clear and convincing evidence. BAM 720, p 1. 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 trafficked her FAP benefits at [REDACTED]. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. Department of Human Services, Bridges Policy Glossary (BPG) (April 1, 2012), p 45. 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 (October 1, 2011), p 2.

The evidence presented by the Department established that the United States Department of Agriculture (USDA) determined in an administrative proceeding that [REDACTED] was an establishment that had engaged in trafficking and was permanently disqualified as of November 7, 2011 from accepting FAP benefits. While this evidence establishes that [REDACTED] was an establishment that trafficked FAP benefits, to support a

trafficking case against Respondent the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at [REDACTED]

To establish that Respondent herself engaged in trafficking at [REDACTED], the Department relied on Respondent's FAP transaction history at [REDACTED] and the USDA's report concerning the food for sale at [REDACTED]. Respondent's history at [REDACTED] shows several unusual transactions: (1) Respondent used her FAP benefits multiple times on the same day; (2) nearly half of Respondent's 24 transactions during the alleged fraud period are in exact denominations of ten; and (3) in March 2011, April 2011, June 2011, July 2011 and August 2011, Respondent had a single \$120 or \$129 transaction or a series of transactions on the same day that totaled \$120. Respondent did not appear at the hearing to provide any explanation for her unusual transactions at [REDACTED]. The Department also relied on the USDA investigative report which stated that, although the store had posted a list of items eligible for purchase with FAP benefits including cold sandwiches and bags of raw chicken wings and tenders ranging in price from \$5 to \$60, the majority of food in the store was deli items and some fresh fruits and vegetables. Photographs of the store's inventory showed a single refrigerated deli case that the USDA indicated was filled with deli meats, cheeses, eggs and small bins of fruits and vegetables. The USDA's inventory list for [REDACTED] showed limited food stock, no optical scanners at checkout, and no shopping baskets or carts available for customers. The store also had an extensive menu of hot food items, which are not eligible FAP purchases. BEM 100 (January 1, 2013), pp 2-3.

The foregoing evidence was sufficient, particularly when coupled with evidence that [REDACTED] trafficked FAP benefits, to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at [REDACTED].

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), 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 concurrent receipt of benefits. BAM 720, p 13.

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

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1.

The OI amount for 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 Department OIG agent's sworn testimony, based on documentation showing Respondent's FAP transaction history at [REDACTED] was used to establish Respondent's trafficking in this case. While the transaction history shows \$906.85 in FAP transactions by Respondent at [REDACTED] between March 1, 2011 and September 30, 2011, the Department excluded all transactions \$30 or less, which it testified could be legitimate food purchases at [REDACTED] and sought to recoup \$719 of FAP benefits as trafficked. The Department's sworn testimony was sufficient to establish that Respondent trafficked \$719 of her FAP benefits at [REDACTED]. Thus, the Department is entitled to recoup \$719 from Respondent.

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 \$719 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$719 in accordance with Department policy.
- reduce the OI to \$ for the period , 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.



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

Date Signed: 3/15/2013

Date Mailed: 3/15/2013

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/hw

cc:

