

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

IN THE MATTER OF:

[REDACTED] E [REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 20134149
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: January 16, 2013
County: Wayne DHS (55)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 a request for a hearing by the Department of Human Services (DHS). After due notice, a telephone hearing was held on January 16, 2013, from Detroit, Michigan. DHS was represented by [REDACTED] Regulation Agent for the Office of Inspector General (OIG). Respondent did not appear and the hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(3).

DHS motioned for a default judgment based on Respondent's absence from the hearing. The motion was denied as DHS cannot meet the burden of proof required for establishing an intentional program violation or a debt collection simply based on Respondent's absence.

ISSUES

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an overissuance of benefits which may be recovered through debt collection actions.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing FAP benefit recipient.
2. Respondent used FAP benefits at a food store (Store) subsequently administratively established to have engaged in FAP benefit trafficking.

3. Over the period of 1/2010-9/2011, Respondent spent \$4776 in FAP benefits at Store through 12 different transactions.
4. Respondent admitted to trafficking FAP benefits at Store.
5. On 10/24/12, DHS requested a hearing to establish that Respondent committed an IPV by trafficking FAP benefits and to establish a debt against Respondent in the amount of \$2014.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV by trafficking FAP benefits. DHS may request a hearing to establish an IPV and disqualification. BAM 600 (8/2012), p. 3.

IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (1/2011), p. 1. DHS defines trafficking as the buying or selling of FAP benefits for cash or consideration other than eligible food. Bridges Program Glossary (4/2012), p. 45.

IPV is suspected when there is **clear and convincing** (emphasis added) 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. BAM 720 (1/2011), p. 1. A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

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. *Id.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

The testifying agent stated that the store lost their ability to accept FAP benefit purchases following an unspecified federal administrative process. DHS also alleged that Store's FAP benefit trafficking was so severe that criminal charges were filed against the owner of the store. The store's exhaustion of administrative remedies and the pending criminal charges against the store were not verified; nevertheless, the testimony from DHS will be accepted as accurate. It is found that Store engaged in significant FAP benefit trafficking to result in administrative disqualification of accepting FAP benefit purchases.

On 8/20/12, the testifying regulation agent stated that she spoke with Respondent by telephone. The agent testified that Respondent admitted to trafficking FAP benefits and that Respondent agreed to admit her guilt in writing; Respondent apparently changed her mind because DHS never received subsequently received Respondent's written acknowledgement of guilt. The testifying regulation noted that Respondent admitted that Store's owner would make purchases from a different store and that Respondent bought the items using FAP benefits after paying a premium. Respondent's confession did not provide specifics about which transactions from Store involved trafficking.

Respondent's admission of trafficking is an appropriate consideration in determining whether trafficking occurred. Respondent's statement was given directly to the testifying agent who credibly testified concerning the statement. Respondent's statement is not hearsay because it was an admission by party opponent (Michigan Rules of Evidence 801(d)(2)); for good measure, the statement also meets a hearsay exception a statement against interest by an unavailable declarant (Michigan Rules of Evidence 804 (b)(3)). Based on the presented evidence, it is found that Respondent engaged in FAP benefit trafficking.

The standard disqualification period is used in all instances except when a court orders a different period. *Id.*, p. 13. DHS is to apply the following disqualification periods to recipients determined to have committed IPV: one year for the first IPV, two years for the second IPV and lifetime for the third IPV. *Id.* DHS established a basis for a one year disqualification against Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount

of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

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 (8/2012), p. 7.

Though Respondent conceded the FAP trafficking issue, Respondent did not verbally admit to a specific amount of FAP benefit trafficking. DHS established that Respondent spent \$4776 in FAP benefits over a period of 1-2010-9/2011 at a store which was established to have engaged in FAP trafficking. Respondent received notice of the allegation and failed to dispute the allegations against her. It is more likely than not that all of Respondent's transactions at Store involved FAP benefit trafficking. DHS presented Respondent's FAP benefit purchase history (Exhibits 18-65) establishing that Respondent spent \$4776 at Store over the period of 1/17/10-9/11/11. Accordingly, DHS established a basis for debt collection against Respondent in the amount of \$4776.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an intentional program violation by FAP benefit trafficking and that Respondent is subject to a one year disqualification. It is further found that DHS established a debt of \$4776 against Respondent concerning FAP benefit trafficking.

The actions requested by the DHS hearing request are AFFIRMED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 28, 2013

Date Mailed: January 28, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Respondent may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Respondent:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

