

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.: 201353419
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: October 8, 2013
County: Wayne

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich. Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a hearing was held on October 8, 2013. Respondent appeared and testified. The Department was represented by RA [REDACTED] of the Office of Inspector General (OIG).

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 January 1, 2011, and July 31, 2012 Respondent's Food Assistance Program (FAP) electronic benefit card was used for transactions totaling [REDACTED] at [REDACTED].
- (3) On July 31, 2012, [REDACTED] wrote and signed a statement admitting to be the owner of [REDACTED] and directing the trafficking of Food Assistance Program (FAP) benefits.
- (4) On November 9, 2011, [REDACTED] wrote and signed a statement admitting to being an employee of [REDACTED] and receiving Food Assistance Program (FAP) payments for unauthorized items at a rate of [REDACTED] on the dollar and issuing cash for Food Assistance Program (FAP) benefits at a rate of [REDACTED] on the dollar. The statement also declared that 85% of the store's customers

were food stamp recipients and that 100% of the food stamp recipients were exchanging their benefits for cash.

- (5) Between January 1, 2011, and July 31, 2012, Respondent engaged in Food Assistance Program (FAP) trafficking by charging [REDACTED] on his Food Assistance Program (FAP) EBT at [REDACTED] in exchange for cash and/or unauthorized items.
- (6) On June 21, 2013, the Office of Inspector General 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 AACR 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.

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS DEPARTMENT POLICY FIP, RAP, SDA, CDC and FAP

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

Policy for IPV disqualifications and over-issuances 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.

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.

DEFINITIONS

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 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.

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 [REDACTED] or more, **or**;
 - The total OI amount is less than [REDACTED], **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.

During this hearing Respondent testified that he knew other people were trafficking FAP benefits in the store but he never did so. Respondent testified that he only used his Electronic Benefit Transfer (EBT) card to purchase food such as expensive rare fish and goat. The USDA investigation information does not show that any such perishable items were found on the premises or that any refrigeration storage or display appliances were located on the premises. Given the totality of evidence in this record, Respondent's assertion is not credible.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has established that Respondent engaged in Food Assistance Program (FAP) trafficking in the amount of [REDACTED] which the Department is entitled to recoup. The Department may apply a Food Assistance Program (FAP) disqualification in accordance with Department policy.

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

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/21/2013

Date Mailed: 10/22/2013

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.

GFH/sw

cc:

[REDACTED]