

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20135612
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County: Oakland DHS (02)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

**HEARING DECISION AND ORDER 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 from Lansing, Michigan. The Department was represented by [REDACTED] 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), MCL 24. 272(1), and Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUE

Did Respondent commit an Intentional Program Violation (IPV) by trafficking Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds the facts to be as stated in the Summary. The Administrative Law Judge further finds as material fact:

1. On [REDACTED], the Department's OIG filed a Request for Disqualification Hearing to establish that Respondent trafficked FAP benefits.
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits.

3. Respondent was a recipient of FAP benefits during the following period [REDACTED].
4. Respondent was aware of the responsibility to properly use his FAP benefits and not engage in trafficking.
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 trafficking period is [REDACTED].
7. During the alleged trafficking period, Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
8. The Department has established by clear and convincing evidence that Respondent trafficked FAP benefits.
9. This was Respondent's first second third IPV.
10. A notice of hearing was mailed to Respondent at the last known address and Respondent did not appear for the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

- 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 the Mich Admin Code, Rule 400.3001 through Rule 400.3015.

An intentional program violation is defined as:

7 CFR § 273.16

- (c) Definition of intentional Program violation. 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 (access device).

An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (12/1/2011) p. 1.

Policy also speaks to the standard of proof that is required in order to determine whether an IPV has occurred:

An IPV is suspected when there is 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 (12/1/2011) p. 1.

See Also: 7 CFR 273.16.

- (6) Criteria for determining intentional Program violation. The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

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.

The overissuance amount for trafficking-related IPV's is the value of the trafficked benefits as determined by:

- The court decision
- The individual's admission
- Documentation used to establish the trafficking determination.

BAM 720 (12/1/2011), p. 7.

A court or hearing decision that finds a client trafficked FAP benefits disqualifies that client from receiving certain 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.

The Department's witness testified that after a search of the Department database, no change of address for Respondent was found, and further, there was testimony that based on information and belief, no other address existed for Respondent.

The Michigan Administrative Hearing System (MAHS), Administrative Tribunal for the Department of Human Services, issued a Notice of Hearing. The Notice of Hearing was sent to the Respondent's address on record with the Department at 27300 Franklin Rd. Apt. 609 Southfield, MI 48034 and was not returned as undelivered.

It is noted that Respondent has the responsibility to provide current contact information to the Department. This Administrative Law Judge is satisfied that Department and MAHS exercised due diligence in attempting to provide proper notice of intent to disqualify Respondent from receiving FAP benefits for the period of time as specified herein. Subsequent to the mailing of the Notice of Hearing, Respondent has neither requested an adjournment nor has an adjournment been granted. Respondent failed to appear at this hearing.

The Michigan Administrative Code Rule 400.901 provides that this hearing

“shall be conducted in accordance with the Administrative Procedures Act of 1969, Act 306 of 1969, as amended, being section 24.201 *et seq.* of the Michigan Compiled Laws.”

MCL 24.272 provides in pertinent part:

- (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment

is granted, may proceed with the hearing and make its decision in the absence of the party.

MCL 24. 272(1).

In the present matter, the Department exercised due diligence in attempting to provide Respondent proper notice and no adjournment was granted. Therefore, pursuant to Section 72, the hearing proceeded in Respondent's absence. This Administrative Law Judge granted the Department's motion for default and the hearing continued with the Department's presentation of proofs.

The Department presented its proofs in support of the claim of IPV and trafficking. The Department submitted the following proofs:

Investigation Report from the Office of Inspector General.
Claimant's EBT History during the period in question.

MCL 24.278 provides for disposition of a contested case by entry of default judgment:

- (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

Default judgment is defined in Black's Law Dictionary as

"A judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim."

In the instant case, Respondent has failed to appear after due notice. Upon entry of proofs and taking of testimony on behalf of the Department, default judgment is hereby entered against 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 commit an IPV by trafficking FAP benefits.
2. As a result of the determination that Respondent trafficked FAP benefits, FAP benefits in the amount of [REDACTED] were trafficked by Respondent during the period [REDACTED].
3. The Department is **ORDERED** to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be disqualified from receiving FAP benefits for a period of

12 months. 24 months. lifetime.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

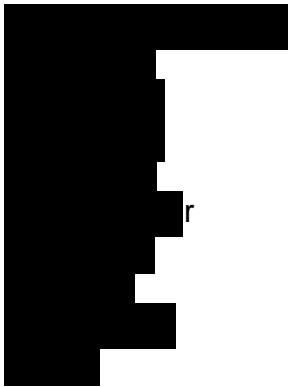
Date Signed: 06/20/2013

Date Mailed: 06/20/2013

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.

AM/kl

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