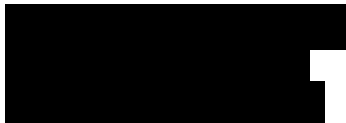


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Registration No: 201356158
Issue No: 3005
Case No: [REDACTED]
Hearing Date: January 30, 2014
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and Michigan Admin Code, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on January 30, 2014 at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10, and Section 72 of the Michigan Administrative Procedures Act, MCL 24.271 *et al.* The Department was represented by Derrick Inman, a regulation agent with the Department's Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an over issuance of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV.
2. In June 2011, a federal investigation by agents with the United States Department of Agriculture's Office of Inspector General (USDA-OIG) revealed that Neighborhood Foodmart, located at 15000 Fenkell St, Detroit, Michigan, had inadequate store inventory, counter space, and the shopping carts and baskets to satisfy the monthly food stamp redemptions being reported, which redemptions indicated multiple transactions in a short time period and high dollar transactions. As result, the USDA-OIG determined that Neighborhood Foodmart was engaged in FAP-trafficking operation. (Department Exhibit 2, pp. 12-33)

3. On December 27, 2011, the United States Department of Agriculture (USDA) notified the owner of the Neighborhood Foodmart that the store has been permanently disqualified from participating in the Supplemental Nutrition Assistance Program (SNAP) as a result of the USDA's investigative findings that the owner had engaged in the trafficking of SNAP benefits in violation of Section 271.2 of the SNAP regulations. (Department Exhibit 2, p. 12)
4. During the period of April and May 2011, Respondent's use of his Michigan Bridge card at Neighborhood Foodmart for purchases totaling \$ [REDACTED] included 4 transactions for a high dollar amount in a short period of time (\$ [REDACTED], \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] on April 14, 2011 and May 14, 2011) that were excessive for a store of Neighborhood Foodmart's size and inventory, which is indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. (Department Exhibit 3, pp. 34-35; Department Exhibit 4, p. 36)
5. As a result of Respondent's buying or selling of FAP benefits for cash or consideration other than eligible food, he received an overissuance of FAP benefits in the amount of \$ [REDACTED] for the period April 1, 2011 through May 31, 2011. (Department Exhibit 1, p. 11)
6. This was Respondent's first determined IPV.
7. A notice of disqualification hearing was mailed to Respondent at his last known address and was not returned by the United States Postal Service 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 program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by Respondent.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive.

A suspected IPV is defined as an overissuance where:

- 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.]

An IPV is suspected by the Department when there is clear and convincing evidence that the client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1.

Clients who commit an IPV are disqualified for a standard qualification period except when a court orders a different period. 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.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or a 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

\$500 or more. The standard IPV disqualification periods apply to FAP trafficking determinations made by the Michigan Administrative Hearing System or by the client signing a repay agreement. BAM 720, p. 14.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

In this case, at the January 30, 2014 disqualification hearing, the OIG's representative, regulation agent Derrick Inman, provided credible, sufficient, undisputed testimony and other evidence establishing that, in June 2011, a federal investigation by agents with the United States Department of Agriculture's Office of Inspector General (USDA-OIG) revealed that Neighborhood Foodmart, located at 15000 Fenkell St, Detroit, Michigan, had inadequate store inventory, counter space, and the shopping carts and baskets to satisfy the monthly food stamp redemptions being reported, which redemptions indicated multiple transactions in a short time period and high dollar transactions. As a result, the USDA-OIG determined that Neighborhood Foodmart was engaged in FAP-trafficking operation.. As a result, the USDA-OIG determined that Neighborhood Foodmart was being used as a front for a FAP-trafficking operation and, on December 27, 2011, the USDA-OIG notified the store's owner that the store has been permanently disqualified from participating in SNAP as a result of the USDA's investigative findings that the owner had engaged in the trafficking of SNAP benefits in violation of Section 271.2 of the SNAP regulations.

The OIG further established that, during the period of April and May 2011, Respondent's use of his Michigan Bridge card at Neighborhood Foodmart for purchases totaling \$ [REDACTED] included 4 transactions for a high dollar amount in a short period of time (\$ [REDACTED], \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] on April 14, 2011 and May 14, 2011) that were excessive for a store of Neighborhood Foodmart's size and inventory, which is indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. Finally, the OIG established that, as a result of Respondent's buying or selling of FAP benefits for cash or consideration other than eligible food, he received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period April 1, 2011 through May 31, 2011.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Based on the credible testimony and other evidence presented, it is concluded that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period April 1, 2011 through May 31, 2011. Further, because this was

Respondent's first IP V violation, the one-year disqualification period from the FAP program is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by trafficking FAP benefits.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of \$ [REDACTED] and
- Respondent is personally disqualified from participation in the F AP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

Suzanne

Suzanne D. Sonneborn

D. Sonneborn

Administrative Law Judge
for Maura D. Corrigan, Director
of Human Services

Department
Date Signed: January 31, 2014

Date Mailed: February 3, 2014

NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which she lives within 30 days of receipt of this decision and order.

SDS/hj

cc: [REDACTED]