

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201359068
Issue No: 3005
Case No: [REDACTED]
Hearing Date: January 30, 2014
Wayne County DHS #18

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 telephone hearing was held on January 30, 2014 from Lansing, Michigan. Respondent appeared by three-way conference call and provided testimony. The Department was represented by [REDACTED] [REDACTED] 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 February 2012, a federal investigation by agents with the United States Department of Agriculture's Office of Inspector General (USDA-OIG) revealed that Noor Fruit Market, located at 18942 Dix Road, Melvindale, Michigan, had inadequate store inventory and merchandise to satisfy the monthly food stamp redemptions being reported, which redemptions indicated multiple transactions in a short time period and high dollar and even dollar transactions. As a result, the USDA-OIG determined that Noor

Fruit Market was being used as a front for a FAP-trafficking operation. (Department Exhibit 4, pp. 51-67)

3. On May 15, 2012, the United States Department of Agriculture (USDA) notified the owner of the Noor Fruit Market 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.
4. Between January 2011 and February 2012, Noor Fruit Market's average monthly food stamp transaction amount was between approximately three times the average monthly food stamp transaction amount of similar stores in the same area. (Department Exhibit 4, p. 52)
5. During the period October 1, 2008 through February 28, 2012, Respondent's use of his Michigan Bridge card at Noor Fruit Market for purchases totaling \$3,875.95 included 36 unauthorized transactions for a high dollar amount that were excessive for a store of Noor Fruit Market'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. 46-50; see also Department Exhibit 2, pp. 33-45)
6. 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 October 1, 2008 through February 28, 2012. (Department Exhibit 1, pp. 21-24; Department Exhibit 3, pp. 46-50)
7. This was Respondent's first determined IPV.

CONCLUSIONS OF LAW

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RTM). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

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 over issuance. BAM 700, p 1. An over issuance 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 over issuance 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 repayment 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 Craig Carlton, testified that, in February 2012, a federal investigation by agents with the United States Department of Agriculture's Office of Inspector General (USDA-OIG) revealed that Noor Fruit Market, located at 18942 Dix Road, Melvindale, Michigan, had inadequate store inventory and merchandise to satisfy the monthly food stamp redemptions being reported, which redemptions indicated multiple transactions in a short time period and high dollar and even dollar transactions. As a result, the USDA-OIG determined that Noor Fruit Market was being used as a front for a FAP-trafficking operation. Mr. Carlton further testified that, between January 2011 and February 2012, Noor Fruit Market's average monthly food stamp transaction amount was between approximately three times the average monthly food stamp transaction amount of similar stores in the same area.

Mr. Carlton further testified that, during October 1, 2008 through February 28, 2012, Respondent's use of his Michigan Bridge card at Noor Fruit Market for purchases totaling \$ [REDACTED] included 36 unauthorized transactions for a high dollar amount that were excessive for a store of Noor Fruit Market's size and inventory, which is indicative of Respondent having bought or sold FAP benefits for cash or consideration other than eligible food. Finally, Mr. Carlton testified 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 October 1, 2008 through February 28, 2012.

In response to the OIG's case, Respondent testified that he did not himself make any of the purchases attributed to his Bridge card during the time period in question. However, Respondent further testified that he authorized at least three other individuals to use his Bridge card during this time period. Respondent further testified that these individuals would purchase grocery items on his behalf from the Noor Fruit Market, although Respondent himself did not consume any of the food items purchased on his behalf due to his ongoing illness at the time. Respondent nonetheless acknowledged that the Noor Fruit Market was not equipped with adequate food inventory to support the excessively high dollar amount purchases that were made at the store with his Bridge card.

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds Respondent's explanation for the use of his



Bridge card at the N Door Fruit Market to be unreasonable and incredible against the backdrop of the established trafficking operation at that store – however, even accepting Respondent’s testimony, Respondent is ultimately responsible for the fraudulent use of his Bridge card, having admitted to authorizing other individuals to use it on his behalf. Consequently, 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 October 1, 2008 through February 28, 2012. Further, because this was Respondent’s first IPV 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 FAP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

Suzanne  

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

Department
Date Signed: January 31, 2014

Date Mailed: February 3, 2014

201359068/SDS

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

SDS/hj

cc:

