

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013 60106
Issue No.: 3005
Case No.: ██████████
Hearing Date: December 4, 2013
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 4, 2013 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of 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), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on July 30, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to not traffic food assistance benefits and obtain items or cash not otherwise available for purchase through an EBT card .
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 it is considering the fraud period is 12/1/10 through 8/31/11(fraud period).
7. During the fraud period, Respondent was issued \$812.39 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$892.39.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office 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.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- 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 is \$1000 or more, or
 - the total OI amount is less than \$1000, **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.

BAM 720 (7/1/13), p. 10.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- 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 reporting responsibilities.

BAM 700 (7/1/13), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department presented evidence that the Respondent frequented the store known as [REDACTED] which was ultimately disqualified by the USDA for trafficking in food assistance benefits. The [REDACTED] had its supplemental nutrition assistance program authorization revoked as of November 29, 2011 after investigation. Exhibit 1, pp. 10. The store was essentially like a dollar store rather than a convenience foods store. The majority of the items for sale there were items that you would not find in a food store; there was no cooler and the only perishable items were convenience foods such as muffins, cupcakes, piecrust and snacks. The store carried a large non-food inventory including paper products, household supplies, tobacco, health and beauty aids, electronics, hardware, floral and gardening items. There was no poultry, fish or meat available and only a moderate stock of fruits, vegetables, breads and cereals and poor stock of dairy products. The counter space was extremely limited and was cluttered everywhere with different products. There were no shopping carts.

The Department also presented as evidence the Respondent's EBT usage history at Pro Discount for the period of the fraud and over issuance. The Respondent frequented the Pro Discount store beginning in July 2011 at which time the Respondent spent \$100.54; July 15, 2011. On August 15, 2011 the Respondent spent \$100.44 in one transaction. On December 15, 2011 the Respondent spent \$87.09, the entire EBT account balance. Thereafter in January the Respondent spent \$137.85 leaving a zero EBT account balance. In February 2011 the Respondent spent \$150.01 leaving a \$4.52 EBT account balance. Thereafter in March on March 11, 2011 the Respondent had two transactions; one for \$87 and another for \$99.99. Lastly, in April 2011 the Respondent had a \$99.99 transaction.

Although the time period the Respondent frequented this store covered six months, based on the other evidence presented of Respondent's EBT card usage, it was established that the Respondent had numerous other stores that he frequented in the area where he has purchased food supplies. Given the limited food stocks at the store and the fact that it was primarily a dollar store, these transactions are evidence of trafficking as purchase of foodstuffs in large dollar amounts given Pro Discount's inventory would have been almost impossible. Also indicative of trafficking was the Respondent's consistent spending much, if not all, of his food assistance benefits on the occasions when he frequented [REDACTED]. Based on the record as a whole, and the evidence of trafficking occurring at [REDACTED] as well as the unusually large dollar amounts of the purchases, it is determined that the Department has met its burden of proof and has shown that trafficking occurred. All of the transactions were prior to [REDACTED] losing its privileges as a SNAP authorized store.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (1/1/13), p. 2. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has established that an intentional program violation has been established as it is determined that the Respondent trafficked his food assistance benefits at [REDACTED]. Therefore this being the Respondent's first intentional program violation, it is determined that the Department's request for a one year disqualification is established.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, based on the finding that the Respondent trafficked his food assistance benefits, the Department has clearly established the over issuance amount of \$812.39 as the Respondent trafficked his food assistance and is not entitled to receive any benefits for the amounts in question. Therefore the Department has met its burden of proof and has established an over issuance.

DECISION AND ORDER

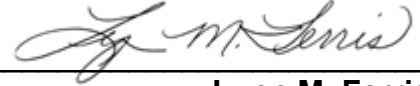
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent did did not commit an IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$812.39 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$812.39 in accordance with Department policy.

- It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 11, 2013

Date Mailed: December 11, 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.

LMF/cl

cc: [REDACTED]
[REDACTED]