

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

IN THE MATTER OF:



Reg. No.: 2013-61218
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: November 7, 2013
County: Wayne DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (DHS), 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 November 7, 2013 from Detroit, Michigan. Dustin Drabek, Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. 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

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an overissuance of benefits.

FINDINGS OF FACT

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

1. Respondent was an ongoing FAP benefit recipient.
2. Over the period of [REDACTED]/2010-[REDACTED]/2011, Respondent made 10 purchases from a store that engaged in FAP benefit trafficking.
3. The 10 FAP benefit transactions totaled \$626.82.

4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for trafficking \$626.82 in FAP benefits over the period of [REDACTED]/2010-[REDACTED]/2011.

CONCLUSIONS OF LAW

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

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 (8/2012), p. 3.

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. *Id.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

The Code of Federal Regulations defines an IPV. 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. 7 CFR 273.16 (c).

The hearing authority shall base the determination of intentional program violation on **clear and convincing** (emphasis added) which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16 (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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

DHS alleged that Respondent intentionally trafficked \$626.82 in FAP benefits over the period of [REDACTED]/2010-[REDACTED]/2011. The evidence against Respondent was circumstantial. Generally, circumstantial evidence is less persuasive than direct evidence, however, at some point, the circumstantial evidence may accumulate to meet the clear and convincing requirements for an IPV. The simplified trafficking argument against Respondent is as follows:

- there exists a food store (for purposes of this decision, it shall be known as “Store”) where it was administratively established that food trafficking was sufficiently rampant to result in Store’s loss of accepting FAP benefit purchases;
- Store has a limited supply of food where it is unlikely that someone would make regular and/or large purchases of food;
- over a period of time, Respondent regularly used FAP benefits at Store using FAP benefits;
- therefore, Respondent trafficked FAP benefits.

DHS presented a letter (Exhibits 1-2) dated [REDACTED]/11 from the United States Department of Agriculture. The letter stated that Store’s owner would be charged with FAP benefit trafficking due to “unusual, irregular and inexplicable activity” for the type of store. It was noted that the suspicious transactions occurred in [REDACTED] and [REDACTED] of 2011. It was noted that various transactions were made too rapidly to be credible. It was also noted that excessively large purchases were made from benefit recipient accounts; DHS did not present evidence of the purchase amounts considered “excessively large”.

DHS presented a letter (Exhibits 3-4) dated [REDACTED]/12 from the United States Department of Agriculture. The letter stated that it was determined that Store committed trafficking violations and that Store would be suspended from accepting FAP transactions until a final decision was rendered. The letter noted that the suspension factored three replies from Store.

An ALERT Case Analysis (Exhibits 5-10) was presented. It was noted that an unspecified person visited Store on [REDACTED]/11 in order to obtain information concerning Store. It was noted that Store was predominantly a tobacco store. It was noted that Store had a large selection of bongos and other smoking paraphernalia but a limited food supply. It was noted that Store did not sell fresh or packaged meats, only canned meats. It was noted that Store did not sell produce. It was noted that Store only sold single serve milks. It was noted that even snack foods were limited in quantities. It was noted that Store sold a larger line of carbonated and non-carbonated beverages. It was noted that shopping baskets were available for customers. It was noted that Store could not support transactions up to \$102.49 in a single transaction or a household spending \$225.36 in less than 24 hours; it was not clear how the analysis reached these conclusions. It was noted Store had more than 20 units of the following items: soups/stews, cakes/pastries/pie crusts/pancakes/waffles, pasta, canned meats and fish. It was noted that Store had less than 20 quantities available of the following: tomato sauce, fruit juice, milk, breakfast cereal, flour, rice and citrus fruits. Presented photos

(see Exhibits 6-7) of Store's inventory tended to confirm an expansive cooler area and a relatively small food shelving area.

DHS presented compelling evidence of FAP trafficking by Store. The question remains whether Respondent engaged in FAP trafficking.

DHS presented Respondent's FAP benefit transaction history with Store (Exhibit 14). The testifying agent noted that Respondent had three sets of two transactions on the same date or separated by one day. The testifying agent noted that if each set of transactions was added, the result was an even dollar amount: \$99.00 on [REDACTED]/10, \$101.00 on [REDACTED]/11 and \$108.00 on [REDACTED]/12 and [REDACTED]/12. The testifying agent contended that if a person bought eligible FAP transaction items, the odds of such a purchase history is improbable. The regulation agent contended that the transactions are likely the result of Store's owner attempt to camouflage trafficking transactions.

DHS seeks a finding of trafficking for a period of [REDACTED]/2010-[REDACTED]/2011. It is mildly troublesome that the evidence only verified that Store trafficked FAP benefits for the period of [REDACTED]/2011-[REDACTED]/2011; on the other hand, it is naïve to presume that Store did not engage in FAP trafficking prior to the time period which included notably suspicious transactions.

Given the administrative proceedings against Store, the very limited food inventory of Store and Respondent's improbable transaction history at Store, it is found by clear and convincing evidence that Respondent trafficked FAP benefits at Store.

The standard disqualification period is used in all instances except when a court orders a different period. *Id.*, p. 13. DHS is to apply the following disqualification periods to recipients determined to have committed IPV: one year for the first IPV, two years for the second IPV and lifetime for the third IPV. *Id.* DHS established a basis for a one-year disqualification against Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. The present case concerns an alleged OI of \$1401. Establishing whether DHS or Respondent was at fault for the OI is of no importance because DHS may seek to recoup the amount in either scenario.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection

methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.


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. BAM 720 (8/2012), p. 7.

In the IPV analysis, it was found that Respondent trafficked FAP benefits at Store based on suspicious transactions at Store totaling even dollar amounts. Given Store's limited food supply, and the relatively high amount of Respondent's transactions at Store (the lowest amount was \$34.99), it is very probable that all of Respondent's transactions at Store involved FAP trafficking. Accordingly, DHS established an overissuance of \$626.82

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an intentional program violation by FAP benefit trafficking in the amount of \$626.82. It is further found that DHS may impose a one year disqualification against Respondent. The DHS hearing request is **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/2/2013

Date Mailed: 12/2/2013

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.

CG/hw

2013-61218/CG

cc:

