

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

**IN THE MATTER OF:**



Reg. No.: 2013-6335  
Issue No.: 3055  
Case No.: [REDACTED]  
Hearing Date: December 20, 2012  
County: Wayne (82-49)

**ADMINISTRATIVE LAW JUDGE:** Robert J. Chavez

**HEARING DECISION 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 December 20, 2012, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

- Participants on behalf of Respondent included: .
- 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 400.3187(5).

**ISSUES**

1. Did Respondent receive an overissuance (OI) of  
 Family Independence Program (FIP)     Food Assistance Program (FAP)  
 Medical Assistance Program (MA)  
benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving  
 Family Independence Program (FIP)     Food Assistance Program (FAP)

### **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 October 19, 2012, to establish an OI of benefits received by Respondent as a result of Respondent having trafficked program benefits and, as such, allegedly committed an IPV.
2. The OIG  has  has not requested that Respondent be disqualified from receiving program benefits for a period of one year.
3. Respondent was a recipient of  FAP  FIP  MA benefits during the period of March 7, 2009, through November 28, 2011, the fraud period in question.
4. During the alleged fraud period, Respondent was issued \$7,043.24 in  FAP  FIP  MA benefits that the Department alleges was trafficked.
5. This was Respondent's  first  second  third alleged IPV.
6. 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 1999 AC, Rule 400.3001 through Rule 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence

Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

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

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 their reporting responsibilities.

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation 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). 7 CFR 273.16(c).
  - (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.

7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance 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, or
  - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving 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.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. 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 for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, pg. 1 (2011).

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the FAP program. Thus, the Department must not only prove that Respondent committed an act, but that there was intent to commit the act.

In the current case, the Administrative Law Judge is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent trafficked their FAP benefits.

The burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent more than likely trafficked or that there was FAP trafficking occurring at the store in question. The Department must prove in a clear and convincing manner that Respondent trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent committed an act that would constitute trafficking.

The Department has failed to prove that in the current case.

First, the undersigned must note that the store owner in question has not been convicted of FAP trafficking at this point in time. The case is ongoing, and, according to the OIG agent presenting the hearing, has not yet gone to trial. Regardless, even if the store had been convicted, the store is not the subject of this administrative hearing; the Respondent is, and the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

The Department's case relies on three key pieces of evidence: that the store in question had FAP transaction benefits far in excess of other stores of its type; that the store in question had very little actual food stock, and that Respondent shopped at that store.

With regard to the store itself, the undersigned is prepared to say that the Department showed clearly and convincingly that the store trafficked FAP benefits. The evidence presented painted a clear picture, especially when compared to other stores in the area that are not under investigation.

Unfortunately, the store is not the respondent in the current case.

In the current case, with this Respondent, the Department has only proven that Respondent shopped at the store in question. While it is true that the store only carried limited food goods, limited food goods does not equal zero food goods. The undersigned cannot find that merely shopping at a store that was an FAP trafficker constitutes actual trafficking, especially considering that the store in question did offer goods that could be purchased with FAP benefits. Mere association is not clear and convincing evidence of malfeasance.

Make no mistake—the undersigned believes that, based on the sheer number of purchases, Respondent most likely trafficked FAP benefits. However, most likely is a threshold far below clear and convincing, and the undersigned cannot hold a respondent guilty of an IPV for benefit trafficking on a probable occurrence.

The evidence in this case only shows that the store in question trafficked FAP benefits, and Respondent shopped at that store—nothing more. Without some sort of affirmative evidence that Respondent engaged in trafficking, no IPV can be found. High dollar amounts spent at the store only raise the specter of trafficking and do nothing to actually show trafficking occurred.

Furthermore, the idea that trafficking occurred is, at most, probable. The store in question has not been convicted. A guilty verdict has not been reached and, legally speaking, at the current point in time, the store is a merely an accused trafficker. IPV most definitely cannot be found for associating with an accused trafficker.

The Administrative Law Judge, therefore, cannot say that the Department has proven their case by clear and convincing evidence and declines to find an IPV.

Furthermore, the undersigned cannot hold that the benefits sought to be recouped in this case, \$7,043.24, were used for trafficking, as there is no evidence that the funds in question were used to buy impermissible items beyond the investigative report discussed above. As such, any recoupment in this case must be denied.

As a final note, the Administrative Law Judge would address one final argument made by the Department pertaining to a pattern in Respondent's purchase history indicative of trafficking. The Department testified that, with regard to this store, Respondent's EBT number was kept on file so that large transactions could be broken up into several smaller transactions. The evidence of the breaking up of transactions—which is indicative of trafficking—would be evident from a pattern of one swiped transaction, followed by several keyed in transactions, over the course of a short period of time. A keyed transaction is a transaction that was keyed into the register from a number on file, and not using the magnetic strip contained on the actual EBT card. The Department further argued that this pattern was contained in Respondent's transaction history and must be considered as evidence of trafficking.

The Administrative Law Judge would agree that such a pattern—shown as one swiped transaction on the same day, followed by keyed transactions over the course of a short period of time—would indeed be evidence of trafficking, and a pattern that would give the undersigned serious pause when considering this case.

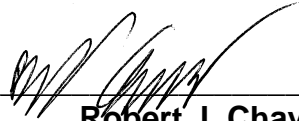
Unfortunately, no such pattern exists in Respondent's transaction history. At most, on April 7, 2009, a swiped transaction was followed by a keyed transaction two hours later. However, on this date, Respondent also had several keyed transactions at a store that is not under investigation for trafficking, thus negating the pattern. No other such pattern of swiped and keyed transactions exists. Furthermore, shortly after April 7, 2009, Respondent's transactions were exclusively keyed. This is more indicative of a faulty magnetic strip than trafficking.

As such, while the undersigned finds the Department's argument interesting, it is not applicable to the current case, and trafficking cannot be found.

**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  did not commit an IPV.
  2. Respondent  did  did not receive an OI of program benefits in the amount of \$7,043.24 from the following program(s)  FAP  FIP  MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



**Robert J. Chavez**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: January 28, 2013

Date Mailed: January 28, 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.

RJC/pf

cc:

