

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

IN THE MATTER OF:



Reg. No.: 2013-62559
Issue No(s): 3005
Case No.:
Hearing Date: December 9, 2013
County: Wayne 49

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 Monday, December 9, 2013 from Lansing, 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 August 6, 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 that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from future receipt of benefits and recoupment of issued benefits.
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 December 2011 through May 2012.
7. During the fraud period, Respondent trafficked \$ [REDACTED] in FIP FAP SDA CDC MA benefits.
8. This was Respondent's first second third alleged IPV.
9. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 (July 2013), p. 12.

In this case the Department alleged that the Respondent [Jones] committed an IPV because he trafficked benefits improperly utilizing his FAP EBT card issued by the State of Michigan. Subsequent to the scheduling of this hearing, the Notice of Hearing and companion documents were mailed to the Respondent via first class mail at the address identified by the Department of Human Services as his last known address. The mailing was returned. The hearing was held in the Respondent's absence owing to acceptable service of process. 7 CFR 273.16(e)(3); BAM 720, p. 12.

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 (July 2013), 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; *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. (Emphasis supplied)

In this case, the Department alleged that the Respondent committed an IPV of FAP benefits by trafficking on two occasions between the dates of March and April of 2012.

BAM 700 defines trafficking as:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.

- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p. 2

(Emphasis supplied)

The Department argued as follows:

The [REDACTED] and [REDACTED] was investigated by the United States Department of Agriculture (USDA) and the OIG which determined that the [REDACTED] was engaged in trafficking and which then led to its permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);

The [REDACTED] actually had only 5 shelves¹ of food products - consisting mostly of canned food, salad dressing and snacks;

The [REDACTED] had no grocery carts, baskets, systematic bagging or boxing that would enable a customer to purchase – *and carry away* - large quantities or groceries;

The [REDACTED] sold hot pizza, meals and casseroles for sit-down consumption on site – these were all products and services not eligible for purchase under EBT usage;

The [REDACTED], on the date of USDA-OIG inspection, had “3 apples and one pear” as its selection of produce;

The [REDACTED], during the period of joint USDA-OIG investigation, had high average individual sales of \$ [REDACTED] while nearby competitors had averages transactions between \$ [REDACTED] and \$ [REDACTED] during the same time period;

The Respondent trafficked in the total amount of \$ [REDACTED] between the dates of December 11, 2011 and May 14, 2012 – his average transactions [of 5] being between \$ [REDACTED] and \$ [REDACTED]

Thus, the Respondent trafficked FAP benefits as there was little likelihood that he could carry over almost \$ [REDACTED] dollar's worth of EBT eligible food product from the [REDACTED] – assuming there was adequate inventory at the time of purchase. The Respondent was believed to be trafficking EBT benefits for cash.

The Department presented evidence of the joint USDA-OIG investigation which led to the permanent disqualification of the [REDACTED] from the SNAP program. See Exhibit A (sub 1 - 5)

¹ Approximately 8 foot by 5 foot

The Department witness [REDACTED] testified that their investigation showed that the facility was a multi-use bakery, pizza parlor and lunch table with limited seating for food consumption. The bulk of the food products offered for sale on the one 5-shelf rack consisted of dry goods, canned goods, salad dressing and individual snack food. Furthermore, the witness testified that there was little counter space to place purchases before the only cash register on site. See Department's Exhibit A, p. 20.

The ALJ supports the conclusion that the facility did not have the necessary supply train to restock or resupply EBT eligible food products at such reported volumes of purchase.

A schematic of the [REDACTED] showed the small seating area and limited space dedicated to sale of EBT eligible food products versus the one point of sale location. See Department's Exhibit A, at page 21.

The photographs submitted by the Department show a facility not dedicated to the sale of groceries - but rather a bakery and pizza place – with limited grocery selection. The only visible produce was a “few apples and one pear” on the date of inspection. See Department's Exhibit A, at page 20.

Review of the Respondent's transactions show “purchases” in the amount of \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] – which, if legitimate, would have resulted in an unmanageable amount of groceries to be “...carried 14.3 miles [according to the OIG agent] without a cart, basket or cardboard box or bag.” The OIG witness also added that the likelihood of an “even-dollar transaction” as reported above [and at Department's Exhibit A. p. 29] “...is highly unlikely... owing to Michigan's sales tax.”

The ALJ found the transaction history provided by the Department – in relation to the Vendor's experience - to be clear and convincing evidence to permit the clear and firm conclusion of trafficking by the Respondent.

In summary, an IPV requires that the Department establish by clear and convincing evidence that the client [REDACTED] has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. The Department has established such trafficking by that standard. The Respondent's purchases were well and above the [REDACTED] [REDACTED] limited supply of food products, counter space, cartage system and represented amounts far in excess of comparable establishments in the area. See Department's Exhibit A – throughout.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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 (July 2013), 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 established its burden of proof to show that the Respondent committed an IPV involving FAP benefits and therefore, is subject to a disqualification under the FAP program.

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, as reported above the Department has satisfied its burden of proof to show that the Respondent did receive an OI or program benefits in the amount of \$ [REDACTED] during the fraud period of investigation December 2011 through May 2012. BAM 720, p. 8 and Department Exhibit A, at page 9.

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 \$ [REDACTED] from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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.

/s/
Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/10/14

Date Mailed: 1/10/14

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.

DM/tb

cc:

