

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

IN THE MATTER OF:



Reg. No.: 2014-1849
Issue No(s): 3005
Case No.:
Hearing Date: January 14, 2014
County: Wayne 15

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 January 14, 2014 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). However, the Respondent appeared late - after closure of her case. The ALJ, on his own motion, in the presence of the OIG, reopened the record and took the Respondent's sworn testimony at 10:10 AM.

ISSUES

1. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) 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 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 2, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of her responsibility to not participate in unauthorized transactions and to closely monitor the use of EBT benefit by those additional authorized users. See Testimony of [REDACTED]
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. She was a competent advocate in her own defense relative to disqualification.
6. The Department's OIG indicates that the time period it is considering the fraud period is December 2011 through October 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and 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) 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 Mich Admin Code, R 400.3001 through R 400.3015.

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 (7-1-2013), 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 (7-1-2013), 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.

In this case, the OIG witness [REDACTED] provided credible, sufficient, un rebutted testimony and other credible evidence to establish that in December of 2012 a joint USDA-OIG investigation determined that Vendor stores; [REDACTED] and [REDACTED] located at [REDACTED] respectively, were determined to have been trafficking FAP benefits. Both stores [service stations] had inadequate inventory, no carts, no baskets or counter space and little SNAP merchandise to support the food stamp redemptions submitted by the vendor on a monthly basis.

Such redemptions included multiple transactions in a short period of time with high dollar amounts, duplicate amounts of \$100 redemption and/or repetitive dollar amounts with transactions occurring in close proximity – usually within a minute or two. See Exhibit #1 at pp. 71 through 73. As a result, the USDA-OIG investigators determined that the [REDACTED] were being used as a front for FAP trafficking.

Between the dates of December 2011 and October 2012 the Respondent [REDACTED] was responsible for participating in 14 unauthorized transactions involving the misuse of her EBT card totaling \$ [REDACTED] in unauthorized redemption. The OIG established misuse of the Respondent's EBT totaling \$ [REDACTED] over-issuance of FAP benefits.

Supported by persuasive documentary evidence the OIG demonstrated the above referenced investigation as well as the vendor's disqualification from the SNAP program. The stores in question were actually gas stations with little counter space,¹ no groceries, only one cash register behind bulletproof glass and no scanning device. Accordingly, the cashier would have been required to hand ring each item through a small slot while the "customer" shuttled back and forth with handfuls of merchandise to place on the narrow shelf. See Exhibit #1, at page 54. The food selection was minimal – this being largely a store dedicated to the sale of snack food. Other items, of course, included tobacco products, smoking paraphernalia and gasoline. The stores carried only small bags to carry away individual items.

¹The amount of benefit allegedly passed to the vendor would represent such product bulk that it would not fit on the counter for efficient check out. See Depart. Ex. 1 at page 54.

There was little SNAP approved food and that which existed was largely expired. See Exhibit #1, at page 1. At the peak of its fraudulent activity the Vendor's gross sales dwarfed his local competitors by a factor in excess of 10:1. An average transaction in the local vicinity ran between \$ [REDACTED] and \$ [REDACTED] – while the suspect Vendor averaged \$ [REDACTED] at [REDACTED].

The Respondent said she had no idea this was going on, but that she "...[was] aware now." She said her [REDACTED]" were on the card – but we all live in my [REDACTED] home. When questioned by the OIG she said she did not observe the \$ [REDACTED] losses on her card [of her \$ [REDACTED] budget]. She said she mostly "[REDACTED] – so she did not pay attention." She said she "...apologized." I found the Respondent's testimony to lack credibility – except for the demonstration of improper control of her EBT card and poor monitoring of her benefit.

The OIG testimony was supported by her persuasive documentary evidence. See Department's Exhibit #1 – throughout.

Based on the credible testimony and the documentary evidence, it is concluded that the OIG established, under a clear and convincing standard, that Respondent committed an IPV in this matter – resulting in OI of FAP \$ [REDACTED] for the period of December 2011 through October 2012.

The Respondent's first IPV violation - a one year disqualification is appropriate.

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 Medicaid. 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. See BAM 720, p. 16.

Over-issuance

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, the Department’s witness, Vitous, established with clear and convincing evidence that the Respondent received an OI of FAP benefits in the amount of \$ [REDACTED] – a significant amount to simply lose track of to “others” authorized to use the EBT card. See Testimony of Respondent.

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 commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program FAP.

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 FAP 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: 1/21/14

Date Mailed: 1/21/14

2014-1849/DM

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/b

cc:

