

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

IN THE MATTER OF:



Reg. No.: 2013-68080
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: February 4, 2014
County: Wayne County DHS #17

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 February 4, 2014 from Lansing, Michigan. The Department was represented by [REDACTED] 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 commit an Intentional Program Violation (IPV) based on Food Assistance Program (FAP) trafficking?
2. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?
3. Should Respondent be disqualified from receiving 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 September 13, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV based on FAP trafficking.
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. The Department's OIG indicates that the time period it is considering the fraud period is November 2011 through December 2012 (fraud period).
5. During the fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
6. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
7. This was Respondent's first alleged IPV.
8. 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) [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:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. 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

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

An IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700 (7-1-2013) p. 8, BAM 720, p.2.

“Trafficking” is the buying or selling of FAP benefits for cash or consideration other than eligible food; selling products purchased with FAP benefits for cash or consideration other than eligible food; or purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p.2.

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, p. 8.

In this case, the Department presented sufficient evidence that the Respondent trafficked in FAP benefits during the fraud period. The Respondent made use of his FAP benefits at two businesses known to engage in FAP trafficking. The stores are gas station/convenience stores that carry a moderate inventory of chips, pop, candy and basic food essentials. The stores do not have shopping carts or baskets and only one point of sale device. A review of the Respondent’s benefits history showed multiple high dollar purchases that are excessive for a store of this size and multiple purchases in short time period. For example, on June 24, 2012, the Respondent made purchases of \$ [REDACTED] at 7:55 am, \$ [REDACTED] and \$ [REDACTED] at 7:56 am at the first store as well as purchases of \$ [REDACTED] at 8:28 am, \$ [REDACTED] at 8:29 am, and \$ [REDACTED] at 8:30 am at the second store. Given the infrastructure, inventory, and logistics of the stores, it would be unwarranted to find that these transactions were conducted without the presence of fraud. Based on this evidence, this Administrative Law Judge finds that the Department has established an intentional program violation based on FAP trafficking.

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. The 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. 16. 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 record evidence shows that Respondent committed his first FAP IPV which carries a 12 month disqualification.

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.

The OI amount for FAP 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 p.8

In this case, documentation used to establish the trafficking determination shows that Respondent was responsible for \$ [REDACTED] in trafficked FAP benefits. Accordingly, the OI amount is \$ [REDACTED] during the above-mentioned fraud period.

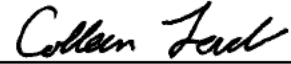
DECISION AND ORDER

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 intentional program violation (IPV) based on FAP trafficking.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.
3. Respondent should be disqualified from receiving 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.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 10, 2014

Date Mailed: February 10, 2014

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.

CL/hj

cc:

