

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

IN THE MATTER OF:



Reg. No.: 2013-69068
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: January 8, 2014
County: Wayne DHS (31)

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 January 8, 2014, from Detroit, Michigan. [REDACTED] 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 3/2012-5/2012, Respondent made 3 purchases totaling \$412.25 from a store that engaged in FAP benefit trafficking.
3. Respondent did not engage in FAP benefit trafficking.

4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for trafficking \$412.25 in FAP benefits over the period from 3/2012-5/2012.

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 \$412.25 in FAP benefits over the period of 3/2012-5/2012. 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 18-19) dated [REDACTED]/12 from the United States Department of Agriculture. The letter stated that Store shall be permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). SNAP is understood to be the federal equivalent of State of Michigan FAP benefits. The letter did not state that trafficking caused the disqualification but it was stated that eligibility for a trafficking civil money penalty was considered.

DHS presented black and white photographs (Exhibit 20) of Store including a hand-drawn diagram of Store’s interior. The photos appeared to show a relatively small shelf area of food items and an area where hot food was prepared. The diagram of the Store was stated by the testifying specialist to have been made by a person investigating Store’s trafficking activities. The diagram showed the following areas: snack, various canned items, and a cooler area which included nuts.

DHS presented Store FS Transactions by Month (Exhibit 22). It was noted that Store’s EBT transactions rapidly increased in quantity and amount in a relatively short amount of time. From 5/2010-3/2011, Store only had one month where the maximum EBT transaction exceeded \$90. From 4/2011 through 5/2012, Store’s maximum transaction amount was never less than \$199. In 3/2012, the maximum EBT transaction rose to \$797. Store’s EBT transactions also grew from less than 40 or less per month in 2010 to over 100 every month from 9/2011-1/2012. Store’s average monthly transaction grew from a high of \$23.54 in 2010 to the following: \$160.83 in 3/2012, \$211.09 in 4/2012 and \$257.63 in 5/2012. For comparison, DHS presented reports (Exhibits 23-25) of an average EBT transaction for stores considered to be Store’s “type”. From 2010-2012, the average FAP transaction from a store of Store’s “type” never exceeded \$10.

DHS presented a compelling argument that Store engaged in FAP trafficking. The question remains whether Respondent engaged in FAP benefit trafficking.

DHS presented Respondent’s FAP transaction history with Store. The history verified that Respondent made the following purchases from Store: \$201 on [REDACTED]/12, \$106.25 on [REDACTED]/12 and \$105 on [REDACTED]/12. The transactions totaled \$412.25. The average transaction was \$137.41.

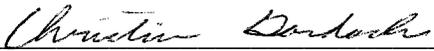
DHS noted that each of Respondent's purchases from Store were made on the 15th of a calendar month. DHS noted that Respondent's FAP benefits became available to Respondent on the 15th of every month. DHS alleged that Respondent's purchase date pattern made it more likely that Respondent trafficked FAP benefits. Despite the pattern, there is no known logical reason that spending FAP benefits on the date that benefits are available makes it more likely that someone engaged in FAP benefit trafficking.

In support of their allegation, DHS noted that it was improbable that two of three Respondent's transactions with Store were for even dollar amounts. A fraudulent transaction often involves even dollar amounts because the person manufacturing the transaction fails to account that random food purchases will only have a 1 in 100 chance of being for an even dollar amount. Barring atypical food pricing within Store (e.g. all food items were rounded to the nearest dime or quarter), there is reason to doubt that Respondent's transactions did not involve trafficking.

Given the administrative proceedings against Store, the very limited food inventory of Store and Respondent's improbably high dollar and even-dollar transactions with Store, DHS had reason to suspect that Respondent's purchases from Store involved FAP trafficking. Given that Respondent only had three transactions with Store, a case of trafficking is less probable. Had Respondent's purchases continued, such high dollar transaction would be difficult to justify other than finding that trafficking was involved. Had more than just two even dollar transactions occurred, a finding of trafficking would have been more tempting. Unusual transactions will occur for everybody at various times. Without direct evidence of trafficking, three unusually large transactions (two for even dollar amounts) are not, clear and convincing evidence of FAP trafficking, even when made at a store known to engage in trafficking. It is found that DHS failed to establish that Respondent engaged in FAP trafficking.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that Respondent committed an intentional program violation by trafficking FAP benefits. The DHS hearing request is **DENIED**.


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

Date Signed: 2/3/2014

Date Mailed: 2/3/2014

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.

CG/hw

cc:

