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

IN	IHE	MAI	IER	OF:

Reg. No.: 2014-5844

Issue No(s).: 3005 Case No.:

Hearing Date:

January 13, 2014

County: Wayne (43)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

this and part Afte Mich	In the request for a hearing by the Department of Human Services (Department), matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), icularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. It due notice, a telephone hearing was held on January 13, 2014, from Detroit, nigan. The Department was represented by Regulation Agent of Office of Inspector General (OIG).
purs	Respondent did not appear at the hearing and it was held in Respondent's absence suant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R .3178(5).
	<u>ISSUES</u>
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)?

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 17, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2.	The OIG \boxtimes has \square has not requested that Respondent be disqualified from receiving program benefits.
3.	Respondent was a recipient of $\ \square$ FIP $\ \boxtimes$ FAP $\ \square$ SDA $\ \square$ CDC $\ \square$ MA benefits issued by the Department.
4.	Respondent \boxtimes was \square was not aware that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future 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 April 1, 2010, through August 31, 2010 (fraud period).
7.	The Department alleges that Respondent trafficked \$374 in \square FIP \boxtimes FAP \square SDA \square CDC \square 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 \square was \boxtimes 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:

- FAP trafficking Ols 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. 10.

In this case, the Department alleged that Respondent committed an IPV because she trafficked her FAP benefits. The Department testified that before the hearing was held, the hearing packet and accompanying documents mailed to Respondent via first class mail at the address identified by the Department as the last known and most recent address were returned by the United States Postal Service as undeliverable, with no forwarding address. Department policy dictates that when correspondence sent to Respondent concerning an IPV is returned as undeliverable, the hearing cannot proceed with respect to any program other than FAP. BAM 720, p 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

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.

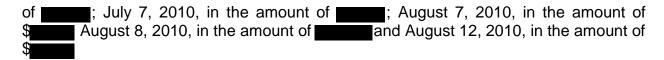
An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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 (emphasis in original); 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.

The Department presented evidence that Tri County was found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had their authorization to accept FAP benefits revoked. To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when she used her FAP benefits at Tri County.

The Department presented evidence of Respondent's FAP transaction history showing the seven purchases made at during the alleged fraud period. The Department contended that transactions greater than on any given day or multiple transactions in the same day greater than were trafficked because did not have the inventory or infrastructure to support the transactions. Specifically, the Department argued that is a selling mostly prepackaged convenience foods and snacks, many of which had expired dates, had limited food items and counter space, no optical scanners and no shopping carts or baskets.

The Department specifically considered purchases made on: April 9, 2010 in the amount of ; June 12, 2010 in the amount of ; June 22, 2010 in the amount



Although unusual, the transactions made on August 7, 2010, and August 8, 2010, do not, by clear and convincing evidence, establish that Respondent trafficked her FAP benefits at

Under the facts presented, the Department has failed to establish, by clear and convincing evidence, that Respondent trafficked her FAP benefits when she used them at

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 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 (May 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 has not satisfied its burden of showing that Respondent committed an IPV by trafficking her FAP benefits. Therefore, Respondent is not 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. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by a court decision, the individual's admission, or 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, which can be established through circumstantial evidence. BAM 720, p 7.

As discussed above, the Department did not establish that Respondent trafficked her FAP benefits when she used them at ______. Thus, the Department is not entitled to recoupment.

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.	The Department has established by clear and convincing evidence that Respondent \square did \boxtimes did not commit an intentional program violation (IPV).
2.	Respondent \square did \boxtimes did not receive an OI of program benefits in the amount of from the following program(s) \square FIP \boxtimes FAP \square SDA \square CDC \square MA.

The Department is ORDERED to delete the OI and cease any recoupment action.

Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 10, 2014

Date Mailed: February 11, 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.

ZB/tm

CC: