

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

IN THE MATTER OF:



Reg. No.: 2014-12084
Issue No(s): 3005
Case No.:
Hearing Date: March 3, 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 March 3, 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).

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 November 18, 2013, to establish program disqualification and an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to not engage in unauthorized transactions.
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 August 1, 2012 through December 31, 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) [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 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 \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED] 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 Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent 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.

See M Civ JI 8.01. An IPV is also suspected for a Respondent 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 Respondent 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.

- 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.

See BAM 700, page 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 Respondent could have reasonably trafficked in a store can be established through circumstantial evidence.¹ (BAM 720, page 8)

In this case, the OIG witness [REDACTED] provided credible, sufficient, un rebutted testimony and other credible evidence to establish that on December 17, 2012 a joint USDA-OIG investigation determined that Vendor stores; [REDACTED], located at [REDACTED] respectively, were determined to have been trafficking FAP benefits. Both stores [REDACTED] 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 even dollar redemptions and/or repetitive dollar amounts with transactions occurring in close proximity – usually within a minute or two – at both stores. See Exhibit #1 at pp. 10 - 11. As a result, the USDA-OIG investigators determined that the [REDACTED] were being used as a front for FAP trafficking.

Between the dates of August 1, 2012 through December 31, 2012 the Respondent [REDACTED] was responsible for participating in 28 unauthorized transactions involving the misuse of her EBT card totaling a debt of \$ [REDACTED] from unauthorized redemptions at both of the Vendor's stores. 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,² no

¹Subject to the more exacting measurement of persuasion – clear and convincing proof. McCormick, Evidence (4th ed) §340, page 575

²The 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 pages 64 through 79.

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 pp. 64 - 79. The food selection was minimal. Other items for sale included tobacco products, smoking paraphernalia and gasoline.

There was little SNAP approved food and that which existed was largely expired. At the peak of its fraudulent activity the Vendor's [REDACTED] 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]. He also hand carried EBT cards to his other store and then returned to maximize dual redemptions to avoid arousing suspicion of SNAP officials.

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 a debt and OI of FAP \$ [REDACTED] for the period of August 1, 2012 through December 31, 2012.

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

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent 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.

Respondents 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. Respondents 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 Respondent 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 established with clear and convincing evidence that the Respondent received an OI of FAP benefits in the amount of \$ [REDACTED] Exhibit #1, at pp. 10-11.

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 did commit an intentional program violation (IPV).
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.



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

Date Signed: 3/10/14

Date Mailed: 3/12/14

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:

[REDACTED]