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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-4179
Issue No(s).: 3005
Case No.: [redacted]
Hearing Date: February 10, 2014
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 10, 2014, from Detroit, 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 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)?
   ☒ Food Assistance Program (FAP)? ☐ Child Development and Care (CDC)?

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 10, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG ☒ has ☐ has not requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits issued by the Department.

4. Respondent ☒ was ☐ was not aware that 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 August 1, 2012, through December 31, 2012.

7. The Department alleges that Respondent trafficked $[redacted] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ 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 ☐ was ☒ 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 $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.

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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked $[redacted] of her FAP benefits at [redacted] ("[redacted] Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2013), p 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (June 2013), p 2.

The Department presented evidence that [redacted] found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had its 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 [redacted]

The Department presented evidence of Respondent's FAP transaction history at [redacted] showing [redacted]8 spent in FAP transactions in amounts up to [redacted] between August 2012 and December 2012. The Department contended that Respondent's transactions were trafficked because [redacted] did not have the inventory or infrastructure to support the high dollar transactions, as the normal amount for a transaction at this type of store is around [redacted]0. Specifically, the Department argued that [redacted] is a gas station/convenience stores selling mostly snack food items with a limited stock of other eligible food items, limited counter space, and no shopping carts or baskets. In addition, the Department stated that the cash register area is enclosed with bullet proof glass making it impractical to purchase large amounts of food or to support the high volume of transactions that were occurring in short amounts of time.

Additionally, a review of Respondent's transaction history at [redacted] reveals that Respondent made several purchases of high dollar amounts on the same day within just one minute of each other or within the same minute, indicative of trafficking. For example, on August 8, 2012, Respondent made two transactions at [redacted] during the same minute for [redacted] and [redacted]; on October 7, 2012, transactions in the amount of [redacted] and [redacted] occurred within the same minute; on November 7, 2012, transactions in the amount of [redacted] and [redacted] occurred within the same minute; and on December 7, 2012, Respondent made a purchase of [redacted]9 and one minute later, a purchase of [redacted]. Several of Respondent's other transactions ended in numbers such as .00, .49, and .99, which the Department stated are figures consistent with trafficking.

At the hearing, the OIG testified that an OIG agent had a telephone conversation with Respondent on June 19, 2013, during which Respondent stated that she was the guardian of her two grandsons and that she let them stay with their uncle in Detroit so she gave him her Bridge Card to purchase food for the children. Respondent informed the OIG agent that she has never been to Detroit with her Bridge Card, so the uncle must have trafficked with her card when he had it. Respondent's statements, whether considered an admission by a party-opponent or the statement of an unavailable declarant against the declarant's pecuniary and proprietary interest, were admissible at the hearing. MRE 801(d)(2); MRE 804(a)(5) and (b)(3).

The foregoing evidence, coupled with the USDA's finding that [redacted] trafficked FAP benefits, was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at [redacted]

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 satisfied its burden of showing that Respondent committed an IPV by trafficking FAP benefits. Because this was Respondent's first IPV, she is subject to a one-year disqualification under the FAP program. BEM 720, pp 13, 14.

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.

The FAP transaction history the Department presented showed Respondent had [redacted] in FAP transactions at [redacted] This evidence established that Respondent trafficked [redacted] of her FAP benefits at 6 Mile 2 between August 2012 and December 2012, and the Department is entitled to recoup that amount.

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 ☐ did not commit an IPV by clear and convincing evidence.

2. Respondent ☒ did ☐ did not receive an OI of program benefits in the amount of [redacted] from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

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.

Zainab Baydoun

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

Date Signed: March 7, 2014
Date Mailed: March 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.

ZB/tm

cc: [redacted]