

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

IN THE MATTER OF:



Reg. No.: 2014-5832
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: February 25, 2014
County: Ingham

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 February 25, 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). However, the Respondent provided written testimony. See Joint Ex. 2

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 October 17, 2013, to establish an OI of benefits and program disqualification for 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. The Respondent was in [REDACTED]. Exhibit #1, pp. 1 and 8.
6. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2011 through August 30, 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan.
8. The Department also alleged 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 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 (7-1-2013), p. 8; BAM 720, p. 2.

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 evidence¹ 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; see *also* 7 CFR 273(e)(6).

¹See [REDACTED], 450 Mich 204 at page 227 (1995) “We agree that the clear and convincing evidence standard, [is] the most demanding standard applied in civil cases...”

- 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 client could have reasonably trafficked in a store can be established through circumstantial evidence.² (BAM 720, page 8)

In this case, the Department's argument against Respondent for trafficking FAP benefits is as follows:

- An unknown [REDACTED] reported that the Respondent gave his [REDACTED] to "someone" over the phone while in custody.
- The Respondent was believed to be in [REDACTED] since [REDACTED]. See Exhibit #1, page 8.
- The OIG reviewed the Respondent's receipt/use of EBT benefits and found that they were used while the Respondent was in [REDACTED] accumulating a *different* OI total of \$ [REDACTED] Exhibit 1, page 2.
- The [REDACTED] who intercepted or identified that the phone call was never identified or testified.
- There was evidence that the Respondent or his designee made an [REDACTED] in the Lansing area and west Michigan between the dates of December 2011 through August of 2012. Exhibit #1, pages 31 – 33.
- Thus, Respondent trafficked FAP benefits.

²Subject to the more exacting measurement of persuasion – clear and convincing proof. [REDACTED] (4th ed) §340, page 575

First, the Department presented no evidence of a specific over-issuance amount. Two different versions were provided in writing; \$ [REDACTED] and/or [REDACTED]. The Administrative Law Judge, accordingly, does not know the amount in controversy by clear and convincing evidentiary standard. See Exhibit #1 – throughout.

Second, the Department witness argued that he knew the Respondent was in [REDACTED] by virtue of “information passed along” and an “...email.” [But see BAM 720, page 8] Actually, the email was from a [REDACTED] who was reading something and apparently interpreting it back to the OIG agent with a one sentence [interpretive] email. There was no official or quasi-official offender identification record – although presumably available.

The best evidence of [REDACTED] came from the Respondent’s own admission - “I am [REDACTED] [See Joint Ex. 2 – throughout]. The Department’s version of the custody-knowledge is not presented with clear and convincing proof.

The Department provided a copy of the Respondent’s DHS 1171 wherein there was no reference to a child, a household or wife – three (3) items variously alleged at hearing today. The DHS 1171 was signed by the Respondent on October 6, 2011. At that time the Respondent self-reported as “homeless.” He did sign the the acknowledgement page. See Exhibit #1, pages 9 through 26.

The Department witness did not remember, at hearing, if the Respondent had anybody on his account. See Testimony of [REDACTED]

Based on the above information, the Department witness concluded that the Respondent trafficked in FAP benefits.

However, the Respondent wrote that he did give the [REDACTED] to his [REDACTED] – so she could “...get some food.” He said he was unaware of the infraction that act entailed. He also acknowledged using the EBT card for a “short period” because he did not know he could not collect FAP while in [REDACTED]. In his written statement the Respondent alleged “...larceny of his Bridge card, [REDACTED] and [REDACTED] [REDACTED].”

On review, there was insufficient evidence to establish that an OI occurred. There was better evidence - by the Respondent’s own hand that an IPV took place at *some* point during the Respondent’s incarceration. However, based on the varied OI amounts alleged by the Department and the informal posting of the Respondent’s incarceration data versus the Respondent’s admissions the ALJ cannot find - with a clear and firm belief - that the fraud period alleged by the Department is accurate.

The Department’s theory of the case failed on two levels; first, there was a lack of clear and convincing evidence to establish that an OI took place for a sum specific; second, in order to meet its burden of proof under the clear and convincing standard of review the Department is required to meet that burden with “...exacting measurement.” [Supra]

In the ALJ's mind the Respondent broke some FAP rules – at some unknown point. But, neither clear nor convincing evidence establishes which dates those rules were violated. Nor is it clear how much in OI was brokered by the Respondent or his agent – if anything. Much more evidence than that presented today would have been necessary to bridge the Department's gap in proof.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits. There was insufficient evidence by the clear and convincing standard that the Respondent did anything unlawful. His status as a prisoner was only partially relevant to the allegation of FAP trafficking.

There was a failure of proof to establish trafficking in this Respondent – based on this record.

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. The Department failed to establish by clear and convincing evidence that Respondent trafficked his FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits.

Therefore, Respondent is not subject to a disqualification under the FAP program.

Over-issuance was inaccurately reported and accordingly was not established with clear and convincing evidence - based on the record above.

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 not commit an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program FAP.

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



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

Date Signed: 3/5/16

Date Mailed: 3/5/14

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.

SEH/tb

cc:

