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

#### IN THE MATTER OF:



2014-9307 Reg. No.: Issue No.: 3005 Case No.: Hearing Date: County: Wayne-17

February 27, 2014

# ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

# HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accor dance with 7 CF R 273.16 and Mi ch Admin Code. Ru le 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, at elephone hearing was held on Februar y 27, 2014 fr om Lansing, Michigan. The Department was represented by 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 400.3187(5).

# ISSUES

- 1. Did Respondent receive an ov erissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
- Did Respondent 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 t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. The Department's OIG filed a hearing r equest on November 5, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV
- 2. The OIG h as requested that Respondent be disgualified from receiving program benefits.

- 3. Respondent was a recipien t of FAP benefits during the period of October 1, 2012 through December 31, 2012.
- 4. The Department's OIG indicates that the time period they are considering the fraud period is October 1, 2012 through December 31, 2012 (fraud period).
- 5. During the alleged fraud per iod, Respondent is alleged to have trafficked \$ in FAP benefits.
- 6. The Depar tment alleges that Respondent received an OI of FAP benefits in the amount of **\$1000000**.
- 7. This was Respondent's first IPV.
- 8. A notice of hearing was mailed to Respond ent at the I ast known address an d was not returned by the US Post Office as undeliverable.

#### CONCLUSIONS OF LAW

Department policies are contained in the Bri dges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amend ed, and is implemented by the federal regulations contained in Title 7 of the Code of Feder al Regulations (CFR). The Department (formerly known as the Fam ily Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representat ive. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2013).

An IPV is suspected for a client who is al leged to have trafficked or is trafficking F AP benefits. BAM 720. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than elig ible food. BAM 700. A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 203. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming o r presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203.

The OI amount for trafficking-related IPVs is the v alue of the trafficked benefits as determined by: (1) the cour t decision; (2) the ind ividual's admiss ion; or (3) documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testim ony from a federal or state investigator of how much a

client could have reas onably trafficked in that store. BAM 720. This can be established through circumstantial evidence. BAM 720.

Clients who commit an IPV are disqualified for a standard di squalification period except when a court orders a different period. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second I PV, a lifetime disqualification for the third IPV, and 10 (ten) years for a c oncurrent receipt of benefits. BAM 720. If the court does not address disqualif ication in its order, the standard period ap plies. BAM 720.

In the present case, the record shows t hat the 6 located at located at ("the store") was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. The evidence showed that the store was a small gas station/convenience store with limited eligible food stock items that was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. The evidence als o showed that the store's inventor y had many items that were we II past the "sell by" date. According to the record, the store owner admitted that he participated in a FAP trafficking operation that allowed patrons to cash in their FAP benefits for money.

Respondent's signature on the Assistance Application in this record certifies that she was aware that fraudulent partici pation in FAP cou ld result in criminal or civil or administrative claims. The Department has established that Re spondent fraudulently used, transferred, altered, acquired, or possessed c oupons, authorization cards, or access devices. The evidence in this reco rd revealed that during the fraud period Respondent engaged in unauthorized transactions at the store. This is bas ed on the history of Electronic Benefit Transaction (EBT) FAP c ard usage history of transactions issued to Respondent.

This Administrative Law Judg e therefore concludes that the Department has shown, by clear and convinc ing evidence, that Resp ondent committed an intentional violation of the FAP program resulting in a total **Sector** overissuance. This is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

# **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

- 1. Respondent did commit an IPV.
- 2. Respondent did receive an OI of FAP benefits in the amount of \$
- The Department is ORDERED t o initiate recoupment procedures for the amount of in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

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C. Adam Purnell Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: March 4, 2014

Date Mailed: March 4, 2014

**<u>NOTICE</u>**: The law pr ovides 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.

CAP/las

