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

DEI ARTIMENT OF HOMA	IV OLIVVIOLO	
IN THE MATTER OF:		
	Reg. No.: Issue No(s).: Case No.: Hearing Date: County:	2014-11283 3005 1 March 6, 2014 Wayne (43)
ADMINISTRATIVE LAW JUDGE: Zainab Baydou	n	
HEARING DECISION FOR INTENTIONA	AL PROGRAM V	IOLATION
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 6, 2014, from Detroit, Michigan. The Department was represented by Regulation Agent of the Office of Inspector General (OIG).		
Respondent did not appear at the hearing and pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3178(5).		
<u>ISSUES</u>		
<u> </u>	State Disability A Child Developme	ssistance (SDA) ent and Care (CDC)

# **FINDINGS OF FACT**

☐ Family Independence Program (FIP)? ☐ State Disability Assistance (SDA)? ☐ Food Assistance Program (FAP)? ☐ Child Development and Care (CDC)?

Should Respondent be disqualified from receiving

Did Respondent, by clear and convincing evidence, commit an Intentional Program

2.

3.

Violation (IPV)?

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 12, 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 $\ \ \Box$ FIP $\ \ \boxtimes$ FAP $\ \ \Box$ SDA $\ \ \Box$ CDC $\ \ \Box$ MA benefits issued by the Department.
4.	Respondent $\boxtimes$ was $\square$ 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 November 30, 2012.
7.	The Department alleges that Respondent trafficked \$899.99 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.

#### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

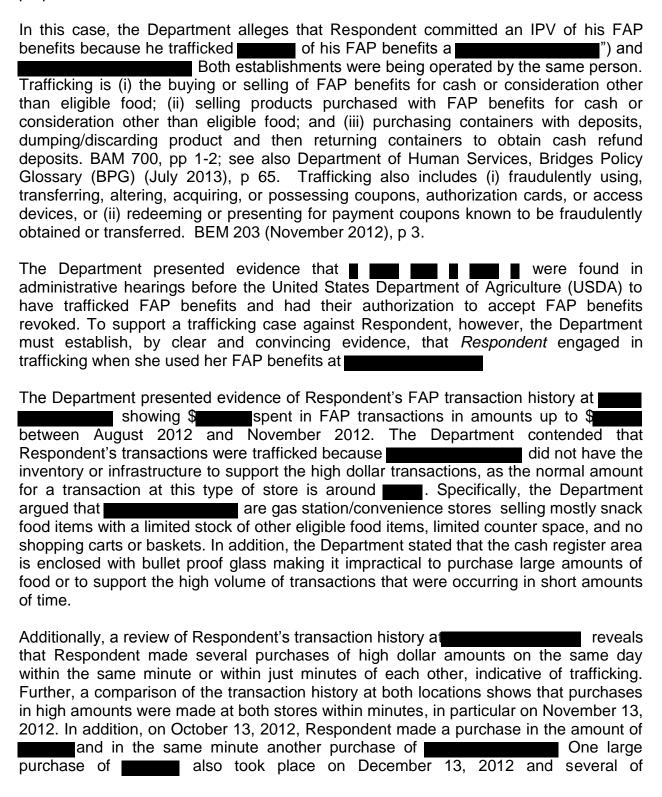
- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical 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.



Respondent's other transactions ended in numbers such as .00, and .99, which the Department stated are figures consistent with trafficking.

The foregoing evidence, coupled with the USDA's finding that trafficked FAP benefits, was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at 6 Mile and 6 Mile 2.

### Disqualification

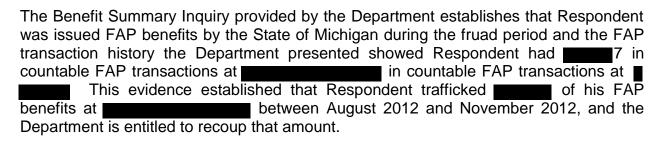
A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, 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, he is subject to a one-year disqualification under the FAP program. BEM 720, pp 13, 14.

# <u>Overissuance</u>

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.



# **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 $\boxtimes$ did $\square$ did not commit an IPV by clear and convincing evidence.
2.	Respondent $\boxtimes$ did $\square$ 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 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.

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

Date Signed: March 19, 2014
Date Mailed: March 19, 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

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