

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

IN THE MATTER OF:



Reg. No.: 2014-11285
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 12, 2014
County: Wayne (35)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 12, 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 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 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 of the responsibility to 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 March 1, 2013 to September 30, 2013.
7. The Department alleges that Respondent trafficked \$1,075.00 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. 12.

In this case, the Department alleged that Respondent committed an IPV because she trafficked her FAP benefits. The Notice of Hearing was mailed to Respondent via first class mail at the address identified by the Department as the last known address. Before the hearing, the notice was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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. 7; 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 \$1,075.00 between March 1, 2013 to September 30, 2013.

BAM 700 defines trafficking as:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700, p. 2.

In general, the Department testified that the Respondent sold her FAP benefits to various individuals who were not included in her group composition during the alleged fraud period as documented via written statements and store surveillance photos. See Hearing Summary, Exhibit 1.

First, the Department testified that Respondent acted as a facilitator regarding a trafficking scheme between two individuals. The Department testified that a co-conspirator ("person 1") resided with the Respondent. The Department testified that person 1 receives food stamps and needed assistance to pay a bill. The Department testified that Respondent knew a second co-conspirator ("person 2"), who would purchase person's 1 EBT card for cash. The Department testified that Respondent and person 1 approached person 2. The Department testified person 2 gave \$100 in exchange for person's 1 EBT card. The Department testified that person 2 used the EBT card on or around March 26, 2013 in the approximate amount of \$139 and later returned the card.

The Department testified that it learned of this information when a local police department referred this case to OIG. The Department testified that person 1 reported that her EBT card was stolen to the local police department. The Department provided the local police report. See Exhibit 1. Moreover, the Department testified during the course of the investigation it interviewed both person 1 and 2 and discovered that person's 1 card was not stolen and instead was exchanged for cash as shown above. The Department further testified that it interviewed both person 1 and 2 and obtained affidavits from them and provided the affidavits as evidence. See Exhibit 1. Moreover, the Department testified that both persons agreed to one-year disqualifications and signed repayment agreements.

Based on the first alleged trafficking above, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. 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). The Department failed to establish by clear and convincing evidence that Respondent trafficked these benefits.

First, the Department failed to present the one-year disqualifications and signed repayment agreements by both persons. Second, the affidavits implicating the Respondent as the alleged facilitator are somewhat hearsay. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Michigan Rules of Evidence (MRE) 801(c). This statement does not fall within any of the hearsay exemptions. Nevertheless, the affidavits have minimal effect and are not persuasive. A review of the affidavits determined that they did not establish by clear and convincing evidence that Respondent trafficked these benefits by acting as the facilitator. Third, both persons failed to be present at the hearing to be a witness in order to provide testimony of how the Respondent was involved in the trafficking scheme. Finally, it was neither Respondent's EBT card nor her cash which was exchanged for the usage of the card. The Department relied heavily on the fact that she facilitated this arrangement. Nonetheless, the Department failed to establish by clear and convincing evidence that Respondent was involved in the above alleged trafficking scheme.

Additionally, the Department provided a second trafficking scheme that it alleged Respondent was involved in. On March 10, 2013, the Department testified that person 2 used Respondent's EBT card in the amount of \$144.38. The Department testified that this involved trafficking of Respondent's EBT card as she had given it to person 2 to use. The Department presented a transaction receipt showing person's 2 name on it because he was a member of the store and also identified the Respondent's EBT card number. See Exhibit 1. The Department testified that the EBT card number belonged to the Respondent. Moreover, the Department presented Respondent's FAP transaction history, which did confirm the above purchase amount and date. See Exhibit 1.

Based on the second alleged trafficking above, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. First, as stated above, person 2 failed to appear at the hearing as a witness in order to provide testimony of how the Respondent was involved in the trafficking scheme. Second, it is possible that Respondent was with person 2 when making the purchase on March 10, 2013. Overall, the Department failed to establish by clear and convincing evidence that Respondent was involved in the above alleged trafficking scheme.

Finally, the Department provided a third trafficking scheme that it alleged Respondent was involved in. The OIG report indicated that it spoke to the Respondent and her sister and determined she had been located in Pennsylvania since July 26, 2013. See Exhibit 1. The Department subsequently obtained Respondent's FAP transaction history and discovered EBT transactions in Michigan even though Respondent was located in another state. See Exhibit 1. The Department alleged that a male was conducting the transactions while the Respondent was out-of-state. The Department provided surveillance photos of the store's showing an unknown male using her EBT card during the times and dates provided in the FAP transaction history. See Exhibit 1. The Department testified that the alleged male was not in her group composition and not entitled to benefits. See FAP EDG, Exhibit 1. The OIG report concluded that Respondent failed to report a change of address as she resided in Pennsylvania from July 26, 2013 to September 11, 2013 and allowed others to use her EBT card in Michigan. See Exhibit 1. Thus, the Department inferred that Respondent was involved in a trafficking scheme by allowing others to use her EBT card when she was not present in the state.

Based on the third alleged trafficking scheme above, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. The Department presented some evidence alleging that she was not present in the state and also alleging the transactions were done by others individuals when she was not there. Moreover, the Department presented store surveillance to show that a male conducted many of the transactions without the Respondent present. However, this evidence does not establish by clear and convincing evidence that Respondent was involved in the above alleged trafficking scheme. The OIG report indicated that it spoke to the Respondent and her sister briefly regarding her stay in Pennsylvania. However, this evidence alone does not rise to a clear and convincing standard to show she was involved in a trafficking scheme. The Department failed to establish that the male in the store surveillance was connected to Respondent's EBT card usage by clear and convincing evidence.

In summary, 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). The Department failed to establish by clear and convincing evidence that Respondent trafficked her FAP benefits

in the above scenarios. Thus, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 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 failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not disqualified from FAP benefits for 12 months. BAM 720, p. 16.

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.

For FAP trafficking, the OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- 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. This can be established through circumstantial evidence.

BAM 720, p. 8.

In this case, the Department's OIG indicates that the time period it is considering the fraud period is March 1, 2013 to September 30, 2013. The Department also alleges that Respondent trafficked \$1,075. It should be noted that during the hearing the Department appeared to calculate a different trafficking amount. This was due to the Department unable to account for the trafficking amount of \$1,075. Nevertheless, as stated in the analysis above, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. The Department was unable to prove that Respondent was involved in FAP trafficking. Thus, the Department has failed to

satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of \$1,075 in FAP benefits and an overissuance is not present in this case.

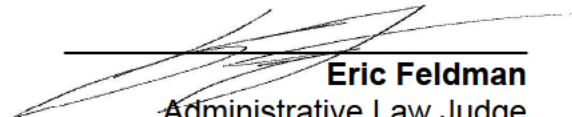
DECISION AND ORDER

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 did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$1,075 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 25, 2014

Date Mailed: March 25, 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.

EJF/tlf

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