

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

IN THE MATTER OF:



Reg. No.: 2014-13425
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: May 5, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 May 5, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Interpreters provided by the Department included [REDACTED] and [REDACTED].

Participants on behalf of Respondent included: Respondent and Respondent's spouse, Adika Chowdhury.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 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 [REDACTED], to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent bought large amounts of food from a store that was involved in FAP trafficking.
5. Respondent has a family of six.
6. Respondent sometimes had his food delivered by the store and would later pay the store for the food in FAP benefits.
7. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] through [REDACTED] (fraud period).
8. 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

- 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.

PAM/BAM 720

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.

PAM/BAM 700; PAM/BAM 720.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits.
PAM/BAM 720

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
 - (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section.

7 CFR 273.16(c)(6).

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. PAM/BAM 720, (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 has proven by clear and convincing evidence that the store from which Respondent purchased goods was involved in trafficking FAP benefits, and that the store was disqualified from the SNAP program. However, the Department has not proven by clear and convincing evidence that Respondent intended to traffic FAP benefits.

The Department pointed to the large purchase amounts Respondent made at the disqualified store. Respondent testified credibly that he purchased large amounts of food for his family of six, and that the food was for the family's traditional diet. The Department pointed to the credit that was issued to Respondent by the disqualified

store. Respondent testified that the store would sometimes deliver the food to his house and he would pay for the food a few days later with his FAP funds and sometimes cash, if he ran out of FAP benefits. It is noted that 7CFR 274.3 allows for home deliveries to SNAP households. The Department pointed to no fresh meats or fish being found in the investigation of the disqualified store. What was found during the investigation of the disqualified store neither proves or disproves the case against Respondent, who may have, for instance, special ordered and received the traditional food in delivery from the store. The Department points to a witness who says 100% of the FAP recipients at the store trafficked in FAP benefits. However, when questioned specifically with regard to that statement, Respondent stated that he did not use FAP benefits for anything other than food, and the Department's witness was not available for questioning. The Department points to other stores from which Respondent could have obtained the same food for a cheaper price. This may show suspicious behavior of Respondent, but does not rise to the level of clear and convincing evidence that Respondent trafficked his FAP benefits.

The Department, overall, has presented evidence that lends itself to suspicion of Respondent's use of FAP benefits in a store that was disqualified for FAP trafficking. However, the Department did not prove by clear and convincing evidence that Respondent himself intended to traffic FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. PAM/BAM 720. 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. PAM/BAM 720.

In this case, Respondent is not disqualified from receiving FAP benefits.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. PAM/BAM 700.

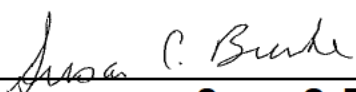
In this case, Respondent did not receive an OI.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program.

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



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 5/15/2014

Date Mailed: 5/15/2014

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.

SCB/hw

cc:

