

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2014-27837
Issue No(s): 3005
Case No.: ██████████
Hearing Date: May 19, 2014
County: Saginaw (00)

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 May 19, 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 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 February 20, 2014, 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 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 April 1, 2012, to May 31, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$120 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 (May 2014), pp. 12-13.

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 (May 2014), 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 his FAP benefits because he trafficked \$120 between April 1, 2012 to May 31, 2012.

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.

Additionally, FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

BEM 203 (October 2011), p. 2.

The Department's argument against Respondent for trafficking FAP benefits is based on the Respondent's Electronic Benefits Transfer ("EBT") card being found in the possession of a suspected drug dealer ("suspect"). Moreover, the Department alleges that Respondent's EBT transaction history was conducted in the area that the alleged suspect resides and that Respondent does not reside in that area. The Department testified that Respondent was fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices other than authorized by the food stamps act. See Hearing Summary, Exhibit 1 and BEM 203, p. 2. Therefore, Respondent trafficked his FAP benefits.

First, the Department presented a police report, which showed how Respondent's EBT card was found in possession of the suspect when he or she was pulled over in a vehicle. See Exhibit 1. The police report indicated that the suspect was in possession of illegal prescription pills. See Exhibit 1. Upon an inventory search of the vehicle, the

police discovered a stack of cards wrapped with a rubber band. See Exhibit 1. Within the stack of cards, the police discovered four other EBT cards, which none were in the name of the suspect and one of the EBT cards belonged to the Respondent. See Exhibit 1. Thus, the police contacted the OIG office that started this alleged IPV. The Department alleges that the Respondent gave his EBT card to the suspect in exchange for drugs because as shown in the police report, the suspect was arrested for the possession of the illegal prescription pills.

Second, the Department testified that the FAP group size is one and there is no apparent relationship of the Respondent with the suspect. Also, the Department testified that the EBT card was not reported stolen by the Respondent.

Third, the Department presented Respondent's FAP transaction history and benefit summary inquiry. The benefit summary inquiry indicated that benefits were paid on April 7, 2012 in the amount of \$120. See Exhibit 1. Then, the Department alleges that trafficking amount occurred on April 10, 2012 in the full benefit amount of \$120. See Exhibit 1. The Department testified that this amount was conducted in the area that the alleged suspect resides and that Respondent does not reside in that area. It should be noted that the Department testified it reviewed the other EBT cards in possession of the suspect and found no transactions done at the same date/place at the time Respondent's alleged EBT usage occurred.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits.

First, the suspected drug dealer failed to be present at the hearing to act as witness in order to show how the alleged trafficking scheme took place.

Second, even though the Department testified the trafficking amount was conducted in the area that the alleged suspect resides, it is possible that the Respondent conducted the amount in the store. Moreover, it is possible that suspect was with the Respondent when making the purchase on April 10, 2012. There was no evidence provided (e.g., store surveillance) to show that the suspect used Respondent's card alone on April 10, 2012.

Third, the Department's main argument was that the Respondent gave his EBT card to the suspect in exchange for drugs because as shown in the police report, the suspect was arrested for the possession of the illegal prescription pills. It is suspicious that Respondent did not report that his card was stolen and the card was found in possession of the suspect; however, this evidence does not establish by clear and convincing evidence that Respondent was involved in the above alleged trafficking scheme. The Department failed to satisfy its burden of showing that Respondent trafficked his FAP benefits by allegedly exchanging his EBT card to the suspect for illegal drugs.

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 his FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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 April 1, 2012 to May 31, 2012. The Department also alleges that Respondent trafficked \$120. As stated in the analysis above, the Department has failed

to establish that Respondent committed an IPV involving his 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 \$120 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 \$120 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: May 21, 2014

Date Mailed: May 21, 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/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]