

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

**IN THE MATTER OF:**



Reg. No.: 2014-16073  
Issue No(s): 3005  
Case No.:   
Hearing Date: March 17, 2014  
County: Wayne #43

**ADMINISTRATIVE LAW JUDGE: Dale Malewska**

**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 17, 2014 from Lansing, 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 over-issuance (OI) of  Food Assistance Program (FAP) 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  Food Assistance Program (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 December 9, 2013, to establish an OI and recoupment of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG  has requested that the 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 aware of the responsibility to not engage in unauthorized transactions.
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 November 2009 through November 30, 2010.
7. During the fraud period, Respondent was issued \$ [REDACTED] in  FIP  FAP  SDA  CDC  MA benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in  FIP  FAP  SDA  CDC  MA benefits in the amount of \$ [REDACTED]
9. This was Respondent's  first alleged IPV.
10. 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 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 \$ [REDACTED] or more, or
  - the total OI amount is less than \$ [REDACTED] 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.

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

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent 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 Respondent 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 Respondent 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; *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 \$ [REDACTED]

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 Department argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as [REDACTED] where the United States Department of Agriculture (USDA) determined that the Vendor was engaged in food and contraband trafficking and now pursues permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- [REDACTED] had a limited supply of non-expired food and it was unlikely that someone would make regular and/or large purchases of food owing to the lack of shopping carts, baskets for shoppers, or scanning devices
- [REDACTED] engaged in Electronic Benefit Transfer (EBT) transactions of FAP benefits whereby customers received cash, credit, and expired sardines in exchange for EBT/FAP benefits;
- The owner of [REDACTED] has been permanently barred from the SNAP program – pending review by the USDA FNS Administrative Review Branch;
- over a period of time, Respondent made “suspicious” purchases made in [REDACTED] with additional purchases thereafter;
- thus, Respondent trafficked FAP benefits.

First, the Department presented no evidence from the USDA other than a “CMP appeal letter” to the Vendor - that the [REDACTED] actually engaged in FAP trafficking resulting in permanent disqualification – however the OIG agent did submit transaction/redemption history showing multiple redemptions of EBT benefits and written statement of a TRICOUNTY FUEL MART employee. See Department’s Exhibit #1, pp. 38, 39.

Second, the Department argued that the [REDACTED] had a limited supply of non-expired food and it was a location where it is unlikely that someone would make large purchases of food owing to a lack of grocery carts, baskets and SNAP approved food products. Additionally, the Department testified that there were no optical scanners.

Also, the Department presented pictures in an attempt to demonstrate the non-complying food products and expired food products. The pictures presented by the Department do indicate that a person would have difficulty making large transactions of non-expired food, SNAP-approved food items. But, the photographs make no link to the Respondent and what she purchased,

Third, the Department showed the [REDACTED] transactions between [REDACTED] involving the Respondent - many of which were over \$ [REDACTED]. See Department's Exhibit #1, at page 16.

Based on the above information, the Department witness testified it is unlikely that someone would make purchases of food in the [REDACTED] for "...more than \$ [REDACTED]"

Finally, to establish that Respondent trafficked her FAP benefits at the [REDACTED], the Department relied on Respondent's FAP transaction history, which showed an OI of \$ [REDACTED] for the time period of [REDACTED].

The Department contends that FAP trafficking often involves patterns of purchases based on statistical improbabilities with existing stock. The OIG agent today also verified with photographic evidence the expired food which stocked the shelves of the [REDACTED].

While the Respondent did not appear for hearing she was "interviewed" and was reported to be "confrontational and loud." On review, she may well have had good reason for her attitude as other Respondents before her have credibly acknowledged [under oath] buying [REDACTED] at prices over and above \$ [REDACTED] a can.

When a customer has no transportation – a full service grocery store may well be impossibility. However, the [REDACTED] was reported to be within walking distance. Thus, convenience becomes necessity and the link to fraudulent activity must be more clearly put and rise to a convincing level of proof – none of which happened in this accounting.

- The Department's own evidence showed that the Respondent had five children.
- There was no direct link to the Respondent from the statement of [REDACTED] [REDACTED] employee "[REDACTED]."

- There was no evidence of what the Respondent purchased or whether she engaged in credit transactions or whether she exchanged EBT benefits for forbidden items or was ever identified by the now cooperating store employee.
- [REDACTED] did not testify at hearing.

The Respondent's transactions were deemed suspicious owing to the dollar totals. While the Administrative Law Judge would agree that the [REDACTED] has likely engaged in conduct violative of its SNAP agreement – under a clear and convincing standard of review the Department has failed to meet its burden of proof – other than to establish suspicion against this Respondent – an inadequate basis from which a public benefit may be extinguished. The basic requirements of due process require more. Goldberg v. Kelly, 397 US. 254 271 (1970).

Assuming a can of baby formula cost over \$20.00 per can<sup>1</sup> – it is easy to imagine how the Respondent could spend a “suspicious” amount of EBT benefit at \$30.00 or more for a month or two.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. It is reasonable to conclude that Respondent could purchase items at the [REDACTED] using her EBT card. Even though the [REDACTED] had no grocery carts, baskets or scanners – an adult could carry home [walking] 2 cans of infant formula with ease.

Old stock purchases, while perhaps unwise, are not evidence of trafficking on the part of a FAP Respondent.

The pictures presented by the Department do indicate expired food products – which might be good evidence for the criminal case, but there was a failure of proof to establish trafficking in this Respondent – based on this record.

Finally, the employee's statement that purchases of expired food or cash transactions occurred will likely serve the Department in its efforts against this particular Vendor – but it establishes nothing versus this Respondent.

In summary, an IPV requires that the Department establish by clear and convincing<sup>2</sup> evidence that the Respondent 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. The Department failed to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at the

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<sup>1</sup>Acknowledged by the Department as a product carried by [REDACTED] ART. Exhibit #1, pp. 9, and 39.

<sup>2</sup>See *In Re Martin*, 450 Mich 204 at page 227 (1995) “We agree that the clear and convincing evidence standard, the most demanding standard applied in civil cases...”

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

It should also be noted that the Department alleged that multiple “customers” were observed trafficking FAP benefits at the ██. However, this was not a statement from the Respondent, nor did it identify the Respondent as a participant in the fraud.

**Disqualification**

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent 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.

Respondents 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 Respondent is otherwise eligible. BAM 710 (July 2013), p. 2. Respondents 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 subject to a disqualification under the FAP program.

Over-issuance was noted in the summary but was not proven.

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

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



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Dale Malewska  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 6/5/14

Date Mailed: 6/13/14

**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.

DM/tb

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