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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-27967
Issue No(s).: 3005
Case No.: [redacted]
Hearing Date: May 15, 2014
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 15, 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 January 15, 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. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2010 through May 31, 2011.

5. During the fraud period, Respondent trafficked [redacted] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $0 in such benefits during this time period.

6. The Department alleges that Respondent received an OI in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits in the amount of [redacted]

7. This was Respondent's ☒ first ☐ second ☐ third alleged IPV.

8. 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.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700, p. 1.

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 their reporting responsibilities.

BAM 700 (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.

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).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is $1000 or more, or
- the total overissuance amount is less than $1000, and
    - the group has a previous intentional program violation, or
    - the alleged IPV involves FAP trafficking, or
    - the alleged fraud involves concurrent receipt of assistance,
    - the alleged fraud is committed by a state/government employee.

BAM 720 (2013), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance 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 (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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV**,** or intentionally committed an act known to be trafficking, with regard to the FAP program. The Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In the current case, the Administrative Law Judge is convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent intentionally trafficked their FAP benefits.

The burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent more than likely trafficked or that there was FAP trafficking occurring at the store in question. The Department must prove in a clear and convincing manner that Respondent trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent committed an act that would constitute trafficking.

The Department has met their burden of proof in the current case.

First, the undersigned must note that while the store owner in question has been found responsible for FAP trafficking at this point in time, the store is not the subject of this administrative hearing; the Respondent is the subject, and the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

That being said, the Department has presented evidence that not only raises the specter of trafficking, but also leaves little room for alternative explanations.

Normally, the undersigned would be reluctant to find trafficking if the only evidence was that of high dollar amounts spent at the store, without some sort of report attached to the case packet showing that the store could only support transactions under a certain amount.

However, the Department has also shown that both of the stores in question had **very** limited food stock that was entirely limited to low dollar values. Pictures of the store inventory show a store with very few items on its shelves, with the items of the type that would retail for very low dollar amounts.

The Administrative Law Judge finds it completely implausible that the store, based on the pictures and inventory provided, could support transactions much over one hundred dollars. While the undersigned usually would not make such a finding, the simple fact of the matter is that, in the current case with this current store, the pictures make it obvious how little there was to actually buy at the store in question.

However, the respondent in question had multiple high-dollar value purchases, some approaching [redacted] at one time. Based on the pictures, simple common sense dictates there is simply no legitimate way that the respondent could have made the purchases indicated in their transaction history at the dollar amounts indicated.

It should be noted that the undersigned has often held that high value dollar purchases alone do not, and cannot, meet the clear and convincing evidence standard. However, the current case is distinguished by the evidence showing extremely low stock, and

purchases so high, as to strain all credulity. Simply put, this case appears to be far outside the norm, and the undersigned cannot see a reasonable way to achieve the purchase amounts made without trafficking.

As such, the Administrative Law Judge holds that the respondent did engage in the trafficking of their FAP benefits.

Furthermore, as the types of trafficking engaged in at the store were determined to be the exchanging of benefits for cash or the purchase of clearly unauthorized goods, the undersigned holds that the trafficking in this case was intentional.

With regard to the amount of trafficking, the Department has submitted transaction histories flagged as likely trafficking; these figures were not objected to, and there is no evidence that the figures are invalid. Once a determination of trafficking has been made, the respondent has the burden of proof in showing that the submitted Department figures are incorrect, and no objections to these figures were made.

Therefore, the undersigned holds that the benefits sought to be recouped in this case, [redacted], were used for trafficking, per a lack of objection to the Department's trafficking calculations. As such, the recoupment requested in this case is affirmed.

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 ☒ did commit an IPV by clear and convincing evidence.

2. Respondent ☒ did receive an OI of program benefits in the amount of $[redacted] from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to

☒ initiate recoupment procedures for the amount of $[redacted] in accordance with Department policy.

☒ It is FURTHER ORDERED that Respondent be disqualified from
☐ FIP ☒ FAP ☐ SDA ☐ CDC for a period of
☒ 12 months. ☐ 24 months. ☐ lifetime.

Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 25, 2014

Date Mailed: June 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.

RJC/tm

cc: [redacted]