

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

IN THE MATTER OF:



Reg. No.: 2014-28506
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 22, 2014
County: Monroe

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 April 22, 2014 from Lansing, 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 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 February 20, 2014, to establish an OI and debt collection 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 FAP 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 February 2012 through June 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan. [Exhibit #1, page 32]
8. The Department alleges that Respondent received an OI in FAP 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 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 (7-1-2013), 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 (7-1-2013), 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 his FAP benefits because she “trafficked \$ [REDACTED] between [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 [REDACTED] was engaged in "...repetitive patterns of unusual, irregular and inexplicable activity for your type of firm." Having determined that [REDACTED] was engaged in trafficking violations they were thereafter permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP);
- [REDACTED] had a limited counter space, a lack of shopping carts and baskets and a neighboring "...Kroger's was 2.99 miles away;"
- The owner of [REDACTED] was permanently disqualified from the SNAP program on [REDACTED];
- over a period of time, Respondent purchased items at [REDACTED] using her FAP benefits;
- she made 15 suspect redemptions of EBT benefits including at least one transaction in the amount of \$ [REDACTED] on [REDACTED] and then four back to back transactions on the same day ([REDACTED]) – all but exhausting her FAP balance for the month - at a store that did not sell fresh meat, fresh produce, frozen food or baby foods.¹
- thus, Respondent trafficked FAP benefits.

¹SNAP beneficiaries cannot lawfully purchase hot foods, prepared foods, alcohol, cigarettes, paper goods, toiletries, medicine, cleaning supplies or diapers with their EBT card.

First, the Department presented evidence from the USDA through its disqualification, charging and appeal letter to the Vendor setting forth the results of the investigation conducted against [REDACTED] as engaged in FAP trafficking. Exhibit #1, pp. 12 - 15.

Second, the Department argued that the [REDACTED] was “basically a convenience store” with limited supply of SNAP products, but having otherwise ineligible inventory consisting of tobacco, beer, wine, liquor, paper products, household cleaning supplies, pet food and health and beauty aids. There was only one cash register, no scanning devices, limited counter space, and no shopping carts or baskets for the customer’s use. Exhibit #1, pp. 9 – 17

Third, the Department showed the [REDACTED] transactions made by the Respondent wherein she made 15 unauthorized transactions. At least one transaction would have been so large the Respondent would not have been able to place it on the limited counter space. Exhibit #1, pages 11 and 32.

The Respondent did not appear for hearing.

Based on the foregoing information and the evidence, the Department has established that Respondent committed an IPV involving her FAP benefits. While it is reasonable to conclude that Respondent purchased some SNAP items at [REDACTED] - on review the ALJ found the [REDACTED] transactions committed on [REDACTED] to be highly representative of an intention to fraudulently traffic her EBT FAP benefit. The greater weight of the evidence preponderated against the Respondent making legitimate purchases in such dollar amounts and proximity in time.

Pursuant to 7 CFR 273.16(e)(6) the criteria for determining an IPV includes clear and convincing evidence that the Respondent has committed, and intended to commit, an IPV.

- The testimony and the documentary evidence established the essence of clear and convincing proof that the Respondent knowingly trafficked FAP benefits – at [REDACTED]

The Department has presented sufficient evidence that the Respondent intentionally trafficked in FAP benefits during the fraud period.

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. The Department has established by clear and convincing evidence that Respondent trafficked her FAP benefits at the [REDACTED].

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 (7-1-2013), 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 met its burden of proof showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program.

Over-issuance

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

In this case, the over-issuance was noted in the summary as \$ [REDACTED] – based on the testimony and evidence of the Department’s witness.

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 commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

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 FAP for a period of 12 months.



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

cc:

