

**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.: 2014-29122
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 5, 2014
County: Macomb (12)

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 June 5, 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 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
 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 March 3, 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 June 22, 2012, to August 28, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$328.77 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 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.

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.

In this case, the Department alleged that Respondent committed an IPV based on trafficking. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 \$328.77.

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 and see also BEM 203 (October 2011), p. 2.

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

- there exists a food store (hereinafter referred to as “Store”), where the United States Department of Agriculture (“USDA”) determined that the Store was engaged in food trafficking and ultimately led to the Store’s permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area;
- Store’s layout and inventory makes it unlikely that someone would make regular and/or large purchases of food; and
- Based on Respondent’s transaction history conducted at the Store, he trafficked his FAP benefits.

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking, which resulted in the Store's permanent disqualification from SNAP on October 4, 2012. See Exhibit 1, pp. 10-14. The Department presented additional documentation regarding the alleged trafficking conducted at the Store. See Exhibit 1, pp. 15-37.

Second, the Department testified that the Store is a convenience store/gas station. See Exhibit 1, p. 1. The Department testified that the food items are limited to some canned and pre-packaged food items, milk, cereals, chips, pop, breads, vegetables, and some meats. See Exhibit 1, p. 1. Additionally, the Department testified that the Store also has non-food items, such as gasoline, lottery tickets, tobacco products, and cleaning supplies. See Exhibit 1, p. 1. The Department testified that the Store has no optical scanners, no shopping carts, and the Store operates through a plastic barrier, with food stock behind the barrier. See Exhibit 1, p. 1. Finally, the Department testified that any transactions made over \$20.00 is suspicious of being involved in trafficking FAP benefits, the average food stamps transaction at the Store is \$12.38, and there are supermarkets and/or other large stores nearby. See Exhibit 1, p. 1. The Department infers that the Store did not have the food items or the physical means to support the transactions. See Exhibit 1, pp. 1-2.

Also, the Department presented pictures in an attempt to demonstrate the above description of the Store's layout. A review of the photos does demonstrate that the Store has purchasable foods and non-purchasable foods. See Exhibit 1, pp. 38-45. The Department, though, did present a photo of the plastic barrier, which would make it difficult to purchase high dollar transactions at the Store. See Exhibit 1, pp. 38-45.

Third, the Department showed the Store's average transactions were greater than transactions at comparable establishments. The Store's average transaction was \$14.48 in July 2012 (during alleged fraud period), which was higher than the average of other comparable establishments. See Exhibit 1, pp. 46 - 102. However, the evidence indicated that comparable establishments had an average EBT card transactions amount of \$5 to \$6 in July 2012. See Exhibit 1, pp. 46 - 102.

Fourth, to establish that Respondent trafficked his FAP benefits at the Store, the Department relied on Respondent's FAP transaction history. See Exhibit 1, p. 106. For example, on June 22, 2012, Respondent made a purchase for \$71.11 and then on the next day, he made another purchase for \$57.20. See Exhibit 1, p. 106. Also, on July 4, 2012, Respondent made two purchases that totaled \$95.50. See Exhibit 1, p. 106. The Department showed a total of nine purchases for the alleged fraud period. See Exhibit 1, p. 106.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits. First, it is reasonable to conclude that Respondent could purchase items at the Store using his

EBT card. Even though the Store had a plastic barrier, there was available food items that Respondent could purchase. See Exhibit 1, pp. 38-45.

Second, the pictures presented by the Department do indicate somewhat that a person would have difficulty making large transactions and/or closely related purchases within days because of the Store's layout, supply, and plastic barrier. However, the pictures also showed food product that are intended for consumption. See Exhibit 1, pp. 38-45. Based on this information, it can be inferred that Respondent could purchase legitimate transactions based on the evidence submitted. See Exhibit 1, pp. 38-45.

Third, the Department's main argument was based on Respondent's FAP transaction history and the available supermarkets nearby. The Department presented his nine transactions conducted at the Store that ranged from as low as \$1.99 to as high as \$71.11. See Exhibit 1, p. 106. The Department contended that these amounted to trafficking. See Hearing Summary, Exhibit 1, pp. 1-2. Moreover, the Department presented transactions that amounted to high dollar amounts within days. See Exhibit 1, p. 106. However, these nine transactions were conducted on different dates and in different amounts with the exception of July 4, 2012, but it should be noted that it is a holiday. See Exhibit 1, p. 106. Nevertheless, the EBT transaction history is not persuasive to conclude that the Respondent is involved in trafficking. As stated previously, the Store had purchasable foods items and it is reasonable to conclude that Respondent could purchase items at the Store using his EBT card. As such, the evidence presented does not establish by clear and convincing evidence that Respondent trafficked his FAP benefits.

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). The Department failed to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at the Store and therefore, no IPV is present in this case.

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 subject to a disqualification under the FAP program.

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 June 22, 2012, to August 28, 2012. The Department also alleges that Respondent trafficked \$328.77. However, 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 \$328.77 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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$328.77 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: June 16, 2014

Date Mailed: June 16, 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]