

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

IN THE MATTER OF:



Reg. No.: 14-002697
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 15, 2014
County: Wayne- 17

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

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 July 15, 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 overissuance (OI) of Food Assistance Program (FAP) 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 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 May 16, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that 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 use benefits only for lawful purposes.
5. Respondent did not have an 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 January 1, 2010 through April 30, 2012 (fraud period).
7. During the fraud period, Respondent was issued an unspecified amount in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in benefits in the amount of \$ [REDACTED]. Initially the Department alleged an OI of \$ [REDACTED] but during the hearing it reduced the amount to reflect only transactions over \$ [REDACTED] were fraudulent.
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 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 (7/1/13), p. 12.

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 (7/1/13), 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.

In this case, the Respondent shopped at the [REDACTED] in Dearborn, Michigan. The [REDACTED] was disqualified from participating in the FAP program by the United States Department of Agriculture after an investigation concluded that the owners were allowing customers to purchase ineligible "hot foods", and to pay down

lines of credit with their FAP. They also allowed customers to exchange their FAP for cash, on an exchange rate of \$1.00 in FAP for \$0.50 in cash.

The Department alleges Respondent engaged in trafficking at the [REDACTED]. Beginning at page 57 of Exhibit 1 is a list of every transaction in which Respondent used his FAP at that location between January 3, 2010 and April 11, 2012. Respondent spent a total of \$ [REDACTED] at that location during the period. The Department alleges that every transaction during the period at the [REDACTED] was fraudulent. It alleges that large-dollar transactions are fraudulent because the merchandise available at the store would not justify such large transactions. Then, it alleges that small-dollar transactions are fraudulent because they were buying ineligible items such as prepared foods and non-food items. The Department did, during the hearing, modify its position to allege that only purchases exceeding \$100 were fraudulent. This Respondent had purchases of \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] at the [REDACTED] [REDACTED] during the time in question. A complete list of Respondent's FAP transactions is found at pages 60-160 – approximately 2,000 transactions over a four-year period. Respondent made several purchases at other stores for more than \$ [REDACTED]. One could infer that, because Respondent was spending large amounts at a store where trafficking was occurring she was engaged in trafficking, such an inference does not meet the Department's burden of proof.

The burden is on the Department to prove, by clear and convincing evidence, that the Respondent fraudulently used his FAP. It is not credible to take a position that every transaction at the mini-mart was a fraudulent transaction, or even that every transaction that exceeds \$100 is fraudulent. While there are some questionable transactions, "questionable" does not amount to the clear and convincing evidence necessary to impose a repayment obligation and a disqualification period on a FAP recipient.

The Department is in a challenging position. The [REDACTED] has been disqualified from participating in the FAP program because of its pattern of trafficking. Obviously, customers had to be participating in the trafficking. That being said, the evidence is insufficient to find that this Respondent was one of the offenders. It is not up to the undersigned to somehow divine specific transactions that were fraudulent; it is up to the Department to provide persuasive evidence that would permit the undersigned to determine which transactions were fraudulent. That has not happened here.

The Department would be well-served to focus its efforts on presenting evidence that particular transactions are fraudulent, rather than arguing that every transaction that occurred in a particular store is fraudulent. It is disingenuous to assert that large-dollar transactions are fraudulent because the store lacks the inventory while at the same time asserting that all small-dollar transactions are fraudulent because the Respondent must have been purchasing hot foods. The Department's witness loses credibility by making such broad-sweeping claims. Specific to the [REDACTED], the witness testified that logs were found showing a large number of customers who had compiled credit accounts at the store and then used their FAP to pay down their credit balances. If documentary evidence is available to show a particular FAP recipient was engaged in that practice, it should be presented. But, if there is no evidence regarding a particular recipient, it is not credible to argue that the recipient acted in that manner because "we think they did." This Decision is not intended to dictate to the Department what types of

cases they should bring. It is, however, intended to suggest to the Department the types of proof it should be prepared to present if it wishes to prevail. Related to that point, the Department should also submit as part of its evidence a report to evidence the amount of FAP the Respondent received during the alleged fraud period. In the instant case, the Department alleged that Claimant received \$ [REDACTED] in FAP and that it was all fraudulent. That is inconsistent with the evidence found at pages 60-160 of Exhibit 1 which plainly shows that the Respondent spent substantial amounts of FAP that was not fraudulent.

Disqualification

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

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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/13), 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, because the Department has not established that the Respondent engaged in trafficking, there is no disqualification to be imposed.

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.

In this case, the Department has not established that there is an over-issuance of a determinable amount

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits from the FAP program.

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



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **7/16/2014**

Date Mailed: **7/16/2014**

DTJ/las

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

