

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

**IN THE MATTER OF:**



Reg. No.: 2014-32076  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: August 25, 2014  
County: St Clair County DHS

**ADMINISTRATIVE LAW JUDGE:** Lynn M. Ferris

**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 August 25, 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 March 21, 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 FAP benefits issued by the Department.
4. Respondent  was  was not aware that 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 September 1, 2012 through September 30, 2012.
7. The Department alleges that Respondent trafficked [REDACTED] in FAP benefits.
8. This was Respondent's first alleged IPV. The Department alleged that this was Respondent's second IPV but did not provide evidence that a prior IPV had occurred.
9. 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 \$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 (July 2013), p. 10.

### **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 (July 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked [REDACTED] of FAP benefits at both [REDACTED] [REDACTED]. Both [REDACTED] establishments were being operated by the same person and were located within several blocks walking distance of each other. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2013), p 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (November 2012), p 3.

The Department presented evidence that [REDACTED] were found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had their authorization to accept FAP benefits revoked. To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when she used her FAP benefits at [REDACTED].

The Department presented evidence of Respondent's FAP transaction history at [REDACTED] [REDACTED] showing that on one day, September 29, 2012, the Respondent spent [REDACTED] in FAP benefits within 4 minutes at [REDACTED] and on the same day, she spent [REDACTED] only 4 minutes after the first round of purchases at [REDACTED]. One of the indicia of trafficking is the purchase in high, even dollar amounts or amounts ending in \$.99., see transaction [REDACTED] and [REDACTED] 9, Exhibit 1 pp. 75. The Claimant also made transactions of [REDACTED] and \$ [REDACTED] on that day. All of the transactions were large for this convenience store and almost all purchases ended in .99 or .00 amounts. Given the large dollar amount of the purchases and the 4 minutes duration for the purchases at each location the Department's evidence has demonstrated by clear and convincing evidence that the Respondent trafficked her FAP benefits.

The evidence also demonstrated that purchases of this volume and high dollar amount at both [REDACTED] operation would have made it difficult to buy high dollar amount items because of the glass turnstile, limited supply of fresh foods and limited space to ring up foods. [REDACTED] and was a gas station convenience store.

The Department contended and presented evidence that Respondent's transactions were trafficked because [REDACTED] did not have the inventory or infrastructure to support the high dollar transactions, as the normal amount for a

transaction at this type of store is around \$5.00. Specifically, the Department argued that both stores were gas station/convenience stores selling mostly snack food items with a limited stock of other eligible food items, limited counter space, and no shopping carts or baskets. In addition, the Department stated that the cash register area is enclosed with bullet proof glass making it impractical to purchase large amounts of food or to support the high volume of transactions that were occurring in short amounts of time.

The foregoing evidence, coupled with the USDA's finding that [REDACTED] trafficked FAP benefits, was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked FAP benefits at [REDACTED]

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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 (May 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 satisfied its burden of showing that Respondent committed an IPV by trafficking FAP benefits. Therefore, this disqualification shall be considered as Respondent's first IPV, and she is subject to a one-year disqualification under the FAP program. BEM 720, pp 13, 14.

### **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. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by a court decision, the individual's admission, or 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, which can be established through circumstantial evidence. BAM 720, p 7.

The Benefit Summary Inquiry provided by the Department establishes that Respondent was issued FAP benefits by the State of Michigan during the fraud period and the FAP transaction history the Department presented showed Respondent had \$810.06 in countable FAP transactions at at 6 Mile Mart and 6 Mile Mart 2 on September 29, 2012. This evidence established that Respondent trafficked \$810.06 of her FAP benefits and the Department is entitled to recoup that amount.

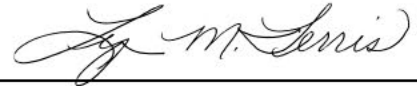
**DECISION AND ORDER**

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. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the FAP program.

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.



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**Lynn M Ferris**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: September 18, 2014  
Date Mailed: September 19, 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.

LMF/tm

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