

1. The Department's OIG filed a hearing request on April 26, 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 FAP benefits for lawful purchases.
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 October 1, 2012, to December 31, 2012.
7. During the alleged fraud period, the Department alleges that Respondent trafficked \$550.98 in FAP benefits issued by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$550.98.
9. This was Respondent's second 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 (May 2014), pp. 12-13.

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 because she trafficked her FAP benefits at [REDACTED] (Store 1) and [REDACTED] (Store 2). 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 2014), p 66. 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 (July 2014), p. 3.

The Department testified that Store 1 and Store 2 were found in administrative proceedings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had their authorization to accept FAP benefits permanently revoked. To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when she used her FAP benefits at Store 1 and Store 2.

To support its case against Respondent, the Department presented an FAP transaction history for Respondent showing her FAP purchases at Store 1 and Store 2 by date, time and amount. A review of Respondent's transaction history shows five transactions at Store 1 on December 5, 2012, within two minutes totaling \$200.99; a single transaction on December 11, 2012, at Store 1 totaling \$200; two transactions at Store 2 within one minute totaling \$150; and two transactions at Store 2 on November 5, 2012, within the same minute totaling \$199.99. The Department pointed out that Stores were gas station convenience stores selling mostly low cost snack foods with a limited stock of other eligible food items, with no shopping carts or baskets and limited counter space. In addition, the Department testified, and presented photographs showing, that the cash register area in each Store is enclosed behind bullet-proof glass and blocked by a turnstile, 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.

Respondent appeared at the hearing and contended that she did not commit any of the transactions at issue. She testified that, because of health issues, she had allowed her adult children and her son's girlfriend to use her FAP card to make purchases. At a certain point, she realized that there appeared to be a discrepancy in the funds remaining in her FAP electronic balance transfer (EBT) card amount. She testified that, in December 2012, she called the toll-free number on the back of her EBT card, learned that a \$200 transaction had occurred at Store 1, went to Store 1 and confronted the owner. She showed the owner a photograph of her daughters and son's girlfriend and the owner identified Respondent's son's girlfriend as having run the transaction at issue. Respondent then testified that she advised the Store 1 owner that she did not authorize

the transaction, demanded that he reimburse her for the transaction, and threatened to turn him in to authorities if he refused. Respondent's transaction history, consistent with her testimony, shows that Store 1 credited Respondent's FAP EBT card with a \$200 reimbursement on December 12, 2012, the day after the \$200 transaction at issue.

In order to establish an IPV, including an IPV based on trafficking, the Department must establish that the client "committed, and intended to commit, an IPV." 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Respondent's credible testimony in this case, corroborated by the transaction history, established that Respondent lacked any intent to commit an IPV by trafficking her benefits at Store 1 or Store 2.

Thus, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV.

Disqualification

A court or hearing decision that finds a client committed an 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 (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 an FAP concurrent receipt of benefits. BAM 720, p. 16.

Because the Department failed to establish that Respondent committed an FAP IPV, she is not subject to a one-year disqualification from 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. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) 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. 8.


As discussed above, the Department failed to establish that Respondent committed an IPV by trafficking her FAP benefits at Store 1 and Store 2. Therefore, the evidence does not support an OI against Respondent for trafficking at Store 1 and Store 2. As such, the Department is not entitled to recoup or collect the \$550.98 it alleges Respondent trafficked at Store 1 and Store 2.

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 in the amount of \$550.98 from the FAP program.

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


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 10, 2014

Date Mailed: September 10, 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.

ACE/pf

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