

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

**IN THE MATTER OF:**

██████████  
██████████████████  
██████████████████████████████

Reg. No.: 14-005457  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: October 13, 2014  
County: KALAMAZOO

**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 October 13, 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 June 30, 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 to 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 February 1, 2012, to September 30, 2014 (fraud period).
7. The Department alleges that Respondent trafficked \$1,128.69 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 a FAP IPV. 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 \$1,128.69 from February 1, 2012 to September 30, 2014.

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.

Additionally, BEM 203 states that these FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or

- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

BEM 203 (October 2011), p. 2.

The Department's 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") conducted an investigation at the Store regarding food trafficking and determined that the Store was engaged in food trafficking regarding the Supplemental Nutrition Assistance Program (SNAP);
- Store has a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food;
- Respondent conducted one high dollar transaction at the Store which is above the threshold;
- Respondent reported homeless, but also purchased large amounts of food at once at other Stores; and
- thus, Respondent trafficked FAP benefits.

It should be noted that the Department argued Respondent conducted one unauthorized FAP transaction at the Store from February 1, 2012 to September 30, 2013. See Exhibit 1, p. 1. Also, the Department testified that Respondent also had transactions consistent for trafficking at other stores (unrelated) for \$1,015.69 within the same time period. See Exhibit 1, p. 1.

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking and was permanently disqualified on April 2, 2013. See Exhibit 1, pp. 56-57; see also USDA letter dated February 28, 2013, pp. 24-26.

Second, the OIG report indicated the Store was a small party store with one cash register, no optical scanner, very limited counter space, and very small inventory of food. See Exhibit 1, p. 3. The Store does not sell meat, very limited dairy, no fresh produce, and only food items of a typical party store. See Exhibit 1, p. 3. The OIG report further indicated that the benchmark for a Store this size is \$8 to \$10; however, the average transaction for this Store is \$20 to \$35. See Exhibit 1, pp. 3 and 32-55. The USDA/OIG verified that any sale to Bridge Cards from this Store that is \$25 or more typically involved FAP trafficking. Respondent's FAP transaction history showed that Respondent made one transaction in this Store in the amount of \$113 on November 10, 2012. See Exhibit 1, p. 106. The Department argued that this amount is well above the threshold for this Store. See Exhibit 1, p. 3.

It should be noted that the Department also testified that Respondent was a known substance abuser with a criminal history. The Department testified that Respondent

was arrested and charged with possession of methamphetamine at the time of the alleged IPV transaction.

Third, 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. 15-23.

Fourth, the Department testified that Respondent also conducted FAP trafficking at other stores as well (unrelated to the Store above). The Department argued that the other transactions are large even dollar transactions, which he spent his entire monthly issuance at times. See Exhibit 1, p. 3. Furthermore, Respondent reported that he was homeless with no food storage capabilities, which the Department argued would make these other transactions inconsistent with his reported living situation. See Exhibit 1, p. 3.

In addition to, the Department presented Respondent's FAP transaction history to show his alleged trafficking at the other stores. For example, Respondent conducted an even purchase amount of \$200 at another store on February 9, 2012. See Exhibit 1, p. 104. Also, on March 9, 2012, Respondent made a purchase for \$44 at another store and then over an hour later made another purchase for \$33.42 at the same store. See Exhibit 1, p. 104. On April 13, 2013, Respondent made a purchase for \$200.04 at another Store and then on May 21, 2013, made another purchase at the same store for \$200. See Exhibit 1, p. 107.

Fifth, the Department presented Respondent's applications dated January 26, 2012 and March 4, 2013, which were submitted both before and during the alleged fraud period. See Exhibit 1, pp. 58-103. The Department testified that Respondent reported that he was homeless in both applications. See Exhibit 1, pp. 59 and 83. As stated previously, the Department argued that these other transactions are inconsistent with his reported living situation. See Exhibit 1, p. 3.

As to Respondent's one alleged FAP trafficking conducted at the Store, 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. See Exhibit 1, pp. 15-23. The pictures presented by the Department showed that there was food product at the Store intended for consumption. See Exhibit 1, pp. 15-23. Based on this information, it can be inferred that Respondent could purchase legitimate transactions. See Exhibit 1, pp. 15-23.

Second, the Department argued that Respondent's \$113 transaction is well above the threshold for this Store and contended that this amount is trafficking. However, Respondent's single transaction is not persuasive to conclude by clear and convincing evidence that 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 at the Store.

As to Respondent's second alleged FAP trafficking conducted at the other store locations (unrelated to the Store above), the Department has failed to establish that Respondent committed an IPV involving his FAP benefits.

As stated above, the Department argued that the other transactions were inconsistent with his reported living situation and contended that it amounted to trafficking. See Exhibit 1, p. 3. However, Respondent's other transactions are not persuasive to conclude by clear and convincing evidence that Respondent is involved in trafficking. In fact, all of the other transactions by the Respondent were conducted at notable establishments. As such, such large purchases by the Respondent would be typical at these notable establishments.

Moreover, a review of Respondent's reported mailing address in both applications was actually his parents'. See Exhibit 1, pp. 59 and 83. Even though Respondent reported being homeless, it is not unreasonable to conclude that Respondent could purchase and store the food items at the parents' residence. Nevertheless, the Department's IPV argument at the other stores' locations is to some extent reasonable. However, 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 other store locations. 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 February 1, 2012, to September 30, 2014. The Department also alleges that Respondent trafficked \$1,128.69. However, as stated in the analysis above, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of \$1,128.69 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 \$1,128.69 from the following program(s)  FIP  FAP  SDA  CDC  MA.



