

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

IN THE MATTER OF:



Reg. No.: 14-008252
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 01, 2014
County: WAYNE- 57 (CONNER)

ADMINISTRATIVE LAW JUDGE: Lynn 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 December 1, 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 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 July 31, 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 not traffick his food benefits by trading the food to pay for rent or rides.
5. It is unknown whether the Respondent had an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement, as no evidence was presented regarding the Respondent's abilities in this regard.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 19, 2013 and June 17, 2014 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
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; (5/1/14) p. 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 (7/1/13) p. 8; (5/1/14) p.1; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1, 12.

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 by circumstantial and hearsay evidence, that the Respondent trafficked his FAP benefits by allegedly trading his food purchased with his EBT card for rides and using it to pay rent. The Department bases its case upon two transactions at [REDACTED]. The circumstantial evidence presented included the following. The Claimant lived 20 miles from the store where the food was purchased. The Respondent spent all of his allotment in one shopping trip ([REDACTED]), allegedly not something in the Agent's opinion that a younger man would do, nor would a younger man cook food every night. The pictures of individuals presented as evidence in a checkout line were the Respondent and the woman, [REDACTED], that the Agent spoke with based upon driver's license identifications used by the Agent, which were not presented or part of the evidence. The woman referred to as witness, [REDACTED] whose daughter Respondent allegedly lived with, told the Department Agent that Respondent traded food for rides and rent (hearsay), and that [REDACTED] was hiding the Respondent, which is why the Agent's efforts to speak to Respondent were thwarted. The woman, [REDACTED] who the Department Agent seeks to present as credible through inadmissible hearsay evidence, is also described as lying for Respondent to conceal his whereabouts. The Department's presentation of the testimony of the woman informant referred to as [REDACTED] is hearsay and is inadmissible as evidence, as well as deemed unreliable. In addition, it was argued that the amounts of the transactions were trafficking because they were \$ [REDACTED], large dollar transactions.

The receipts from [REDACTED] presented as evidence showed that in addition to the Respondent purchasing his food, the other individual, [REDACTED], also purchased food on the same receipt with her cash. The Agent testified that the informant, [REDACTED] told him that she "estimated that between [REDACTED] of food was traded for rides and rent" (hearsay). No signed statement with respect to this understanding to support these estimates was obtained. The Agent also testified that what actually happened, and what the informant told him with regards to the Respondent's whereabouts, was "a lie" because the living arrangement and his presence in the home was a lie. Thus, the very individual the Department relies upon to establish trafficking, by its own admission, is unreliable and a liar. The Agent also alleges that the Respondent was being hidden by the informant.

Based upon the circumstantial evidence presented, the evidence that the Department has presented does not demonstrate trafficking. The Department Agent also asserts that his personal opinion and beliefs presented as testimony, is factual evidence as to what happened based upon his experience. This testimony is opinion evidence, and in and of itself, is not sufficient to prove this case because the Department presents these views of the facts as proven facts and, therefore, asserts that such testimony should be accepted as meeting the clear and convincing evidence standard. However, it is determined that it does not.

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. 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. 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 proven or established an IPV, the Department is not entitled to a finding of disqualification.

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.

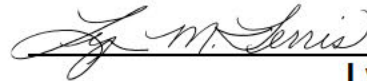
In this case, the Department did not establish its alleged IPV and thus is not entitled to a finding that the Respondent was overissued benefits.

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 [REDACTED] from the following program(s) FAP.

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



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

Date Signed: **12/3/2014**

Date Mailed: **12/3/2014**

LMF/tm

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:

