

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

IN THE MATTER OF:



Reg. No.: 2014-21731
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 3, 2014
County: Wayne DHS (31)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (DHS), 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, an in-person hearing was held on January 8, 2014, from Hamtramck, Michigan. Dustin Drabek, regulation agent for the Office of Inspector General (OIG), testified on behalf of DHS. The above-captioned Respondent appeared. Tahir Alaragy, Respondent's spouse, appeared as a witness and as Respondent's translator.

ISSUES

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an overissuance of benefits.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing FAP benefit recipient.
2. Over the period of 5/2011-12/2012, Respondent spent \$2024 from a grocery store (hereafter referred to as "Store") which was allegedly involved in FAP trafficking.
3. Respondent did not engage in FAP benefit trafficking.

4. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV of \$2,024 by spending FAP benefits on a line of credit with Store over the period from 5/2011-12/2012.

CONCLUSIONS OF LAW

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Respondent presented an Order of Dismissal (Exhibit A1) dated 11/21/13. The order stated that DHS failed to appear for a hearing scheduled for 10/17/13. Respondent's name and address was captioned on the order. Respondent alleged that DHS is barred from seeking an IPV based on res judicata.

The presented Order of Dismissal is suggestive that DHS lost a previous hearing concerning an IPV against Respondent. It is possible that the previous hearing concerned a different IPV allegation against Respondent. If the alleged IPV of the dismissed hearing is the same as the current hearing, res judicata would prevent DHS from a second chance at establishing an IPV. For purposes of this decision, it will be presumed that DHS is bringing a different claim of IPV and that res judicata is not applicable.

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 (8/2012), p. 3.

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. *Id.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a

violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

The hearing authority shall base the determination of intentional program violation on **clear and convincing** (emphasis added) which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16 (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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

DHS alleged that Respondent maintained a line of credit with a store that is known to engage in FAP trafficking. DHS alleged that Respondent spent \$2,024 at said store over the period of 5/2011-12/2012.

DHS presented a letter (Exhibits 9-10) dated [REDACTED] from the United States Department of Agriculture. The letter stated that Store shall be permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). SNAP is understood to be the federal equivalent of State of Michigan FAP benefits. The letter did not state that trafficking caused the disqualification but it was stated that eligibility for a trafficking civil money penalty was considered.

DHS presented a Memorandum of Interview (Exhibits 11-12). The memorandum summarized an interview between U.S. officials and the owner of Store. The memorandum indicated that Store's owner conceded that his employees engaged in FAP benefit trafficking.

DHS presented various black and white photographs (Exhibits 13-31) of Store. The photographs included a photo of some of Store's inventory, a binder purportedly used to track FAP benefit trafficking transactions, a bag of receipts related to FAP trafficking, and a log of customers with store balances.

DHS presented a FAP expenditure history (Exhibits 32-34). The history verified that Respondent spent \$2,024.80 at Store over the period from [REDACTED]. Respondent's transaction history verified a total of 54 transactions. Respondent's transactions ranged from \$2.00 to as high as \$226.99.

DHS presented a compelling argument that Store engaged in FAP trafficking. It is less certain that Respondent engaged in FAP benefit trafficking.

It was not disputed that the testifying regulation agent credibly interviewed Respondent and her spouse before an IPV action was brought. The testifying regulation agent testified that during the interview, Respondent, through her translating spouse, admitted that she maintained a line of credit with Store; Respondent and her spouse denied

making such a statement. Respondent and her spouse testified that they purchased halal meat and other items from Store; they each denied maintaining a line of credit with Store. Respondent and her spouse testified that many EBT purchases were made from Store, but that the purchases were in line with their large family.

DHS testimony concerning Respondent's concession was credible, however, it is possible that DHS erroneously interpreted a concession due to language differences. As it happened, DHS had an opportunity to definitively establish that Respondent maintained a line of credit with Store.

Presented photographs included a log (Exhibit 14). DHS testimony indicated that the log listed persons owing money to Store. DHS testimony conceded that the log was translated. DHS did not present evidence from Store's records linking Respondent to any type of FAP trafficking. It would have been compelling evidence of PIV had DHS verified that Respondent's name appeared on Store's credit log. The failure by DHS to present such evidence is compelling evidence that Respondent did not commit an IPV.

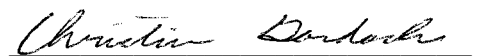
It is found that DHS failed to verify that Respondent committed an IPV by trafficking FAP benefits. The analysis will proceed to consider a debt collection action against Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

Without a finding that Respondent committed FAP trafficking, an over-issuance related to FAP trafficking cannot be established. Accordingly, it is found that DHS failed to establish that Respondent received an over-issuance of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that Respondent committed an IPV by trafficking FAP benefits for the period of 5/2011-12/2012. It is also found that DHS failed to establish that Respondent received an over-issuance of FAP benefits. The DHS request to establish IPV and/or debt collection is **DENIED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

2013-61218/CG

Date Signed: 12/26/2014

Date Mailed: 12/26/2014

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.

CG/hw

cc:

