

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

IN THE MATTER OF:

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Reg. No.: 14-002436
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 2, 2014
County: MACOMB-DISTRICT (12)

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 July 2, 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 April 22, 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 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 12, 2011 to September 7, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$1,479.97 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 an IPV because she trafficked her FAP benefits. 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. During the hearing, the Department testified that the hearing packet 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 her FAP benefits because she trafficked \$1,479.97.

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 and see also BEM 203 (July 2011), p. 2.

The Department 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”) determined that the

Store was engaged in food trafficking and ultimately led to the Store's permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);

- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area;
- Store's layout and inventory makes it unlikely that someone would make regular and/or large purchases of food; and
- Based on Respondent's transaction history conducted at the Store, she trafficked her FAP benefits.

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking, which resulted in the Store's permanent disqualification from SNAP on October 4, 2012. See Exhibit 1, pp. 14-15. The Department presented additional documentation regarding the alleged trafficking conducted at the Store. See Exhibit 1, pp. 16-38.

Second, the Department testified that the Store is a convenience store/gas station. See Exhibit 1, p. 1. The Department testified that the food items are limited to some canned and pre-packaged food items, milk, cereals, chips, pop, breads, vegetables, and some meats. See Exhibit 1, p. 1. Additionally, the Department testified that the Store also has non-food items, such as gasoline, lottery tickets, tobacco products, and cleaning supplies. See Exhibit 1, p. 1. The Department testified that the Store has no optical scanners, no shopping carts, and the Store operates through a plastic barrier, with food stock behind the barrier. See Exhibit 1, p. 1. Finally, the Department testified that any transaction made over \$20.00 is suspicious of being involved in trafficking FAP benefits, the average food stamps transaction at the Store is \$12.38, and there are supermarkets and/or other large stores nearby. See Exhibit 1, pp. 1-2. The Department infers that the Store did not have the food items or the physical means to support the transactions. See Exhibit 1, pp. 1-2.

Also, 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 each Store has purchasable foods and non-purchasable foods. See Exhibit 1, pp. 39-46. The Department, though, did present a photo of the plastic barrier, which would make it difficult to purchase high dollar transactions at the Store. See Exhibit 1, pp. 38-45.

Third, the Department showed the Store's average transactions were greater than transactions at comparable establishments. The Store's average transaction was \$14.48 in July 2012 (during alleged fraud period), which was higher than the average of other comparable establishments. See Exhibit 1, pp. 47 - 103. However, the evidence indicated that comparable establishments had an average EBT card transaction amount of \$5 to \$6 in July 2012. See Exhibit 1, pp. 46 - 103.

Fourth, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent's FAP transaction history. See Exhibit 1, pp. 110-112. For example, on November 5, 2011, Respondent made three separate transactions, which totaled \$142.69. See Exhibit 1, p. 110. Also, on January 5, 2012, Respondent made two separate transactions that totaled \$113.95. See Exhibit 1, p. 111. On April 16, 2012, Respondent made two separate transactions, which totaled \$84.96. See Exhibit 1, p. 111. Respondent continued this pattern throughout the alleged fraud period. See Exhibit 1, pp. 110-112.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving her FAP benefits. First, the evidence that Store had limited counter space was persuasive as there was a plastic barrier, which would make it difficult to purchase high dollar transactions. See Exhibit 1, pp. 38-45. However, the pictures also showed food products that are intended for consumption.

Nevertheless, the Department's main argument was based on her FAP transaction history, which presented persuasive evidence that Respondent committed an IPV involving her benefits. The Department did present several transactions that were suspicious as shown above. The evidence presented that over a period of time, Respondent had transactions conducted the same day, which amounted to high dollar purchases. See Exhibit 1, pp. 110-112. Moreover, the Department presented closely related transactions that were conducted within days. For example, on April 13, 2012, Respondent made a purchase in the amount of \$57.57 and then on the next day, she made another purchase in the amount of \$57.47. See Exhibit 1, p. 111. In summary, there was persuasive evidence that the Respondent is involved in trafficking based on the transaction history.

In summary, the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits at the Store. A review of the evidence presented large transactions and closely related transactions at the Store that the Respondent could not reasonably purchase food items for consumption. Moreover, the Department presented credible evidence that each Store's average transactions were greater than transactions at comparable establishments. See Exhibit 1, pp. 46 - 103. Thus, the Department has established that Respondent committed an IPV involving her FAP benefits.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

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 September 12, 2011 to September 7, 2012 and that Respondent trafficked \$1,479.97 between this time period.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. The Department was able to prove that Respondent was involved in FAP trafficking. The Department has satisfied its burden of showing that Respondent did receive an OI of program benefits. Thus, it is found that Respondent received an OI of program benefits in the amount of \$1,479.97 from the FAP program. See BAM 720, p. 8. It should be noted that the Department did not include several transactions below \$20 in the total OI amount. See Exhibit 1, pp. 110-112.

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:

