

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

IN THE MATTER OF:



Reg. No.: 14-003516
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 15, 2014
County: ST. JOSEPH

ADMINISTRATIVE LAW JUDGE: Robert Chavez

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 September 15, 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

- Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (MA)

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- Family Independence Program (FIP) 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 May 30, 2014 to establish an OI of benefits received by Respondent as a result of Respondent having trafficked program benefits and, as such, allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits for a period of one year.
3. Respondent was a recipient of FAP FIP MA benefits during the period of January 1, 2010 through February 28, 2014, the fraud period in question.
4. During the alleged fraud period, Respondent was issued [REDACTED] in FAP FIP MA benefits that the Department alleges was trafficked.
5. This was Respondent's first second third alleged IPV.
6. 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700, p. 1.

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 their reporting responsibilities.

BAM 700 (2013), p. 6; 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.

The federal Food Stamp regulations read in part:

(c) Definition of Intentional Program Violation. Intentional Program Violation 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 (access device). 7 CFR 273.16(c).
- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence 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(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2013), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance 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 (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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the FAP program. Thus, the Department must not only prove that Respondent committed an act, but that there was intent to commit the act.

In the current case, the Administrative Law Judge is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent trafficked their FAP benefits.

First, the undersigned notes that intentionality is a specific requirement under the Code of Federal Regulations. The Code of Federal Regulations makes no distinction as to whether the IPV at hand be for a failure to report information or FAP trafficking; a clear and convincing show of intentionality is required. Therefore, it is possible to

unintentionally traffic FAP benefits; in such a situation, a finding of IPV would be inappropriate.

Additionally, it should be noted that the burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent more than likely trafficked or that there was FAP trafficking occurring at the store in question. The Department must prove in a clear and convincing manner that Respondent trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent intentionally committed an act in order to traffic their FAP benefits.

The Department has failed to prove that Respondent intentionally trafficked their FAP benefits.

First, the undersigned must note that the actions of the store are not at issue in the current case and the store in question is not the subject of this administrative hearing; while there is clear evidence, including confessions that the store in question engaged in the trafficking of FAP benefits, the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

The Department's case relies on three key pieces of evidence: that the store in question admitted to trafficking FAP benefits; that the store in question had very little actual food stock, and; that Respondent shopped at that store and had purchasing patterns that were, in the experience of the investigating agent, consistent with FAP trafficking.

With regard to the store itself, the undersigned is prepared to say that the Department showed clearly and convincingly that the store trafficked FAP benefits. The evidence presented painted a clear picture of FAP trafficking, and the evidence shows that the USDA permanently disqualified the store from participating in the FAP program because it trafficked benefits.

Unfortunately, the store is not the Respondent in the current case.

In the current case, with this Respondent, the Department has only proven that Respondent shopped at the store in question. While it is true that the store only carried limited food goods, limited food goods does not equal zero food goods. The undersigned cannot find that merely shopping at a store that was an FAP trafficker constitutes actual trafficking, especially considering that the store in question did offer goods that could be purchased with FAP benefits. Furthermore, the Department was unable to define or prove exactly what constituted a limited selection of food goods; when asked, the Department could not definitively state how much in food goods were capable of being purchased at one time with FAP benefits.

Mere association is not clear and convincing evidence of malfeasance.

The Department also argued that Respondent trafficked benefits, based on the trafficking patterns identified by the investigating agent, alleging high single transaction amounts that are indicative of trafficking. However, the undersigned must reluctantly state that the testimony of the investigating agent was given zero credibility, the reasons for which are discussed below. Even if the undersigned found the agent's testimony credible, at most the undersigned could find that Respondent most likely trafficked benefits, and most likely is a threshold far below clear and convincing; the undersigned cannot hold a Respondent guilty of an IPV for benefit trafficking on a probable occurrence. Trafficking patterns only raises the specter of trafficking and does not establish clear and convincing evidence of trafficking in and of itself.

The evidence in this case only shows that the store in question trafficked FAP benefits, and Respondent shopped at that store—nothing more. Without some sort of affirmative evidence that Respondent engaged in trafficking, no IPV can be found. The patterns identified by the investigating agent of the amounts spent at the store only raise the specter of trafficking and do nothing to actually show trafficking occurred, if the agent could be found credible.

Whether or not the Respondent committed a trafficking offense is, at most, probable. Though the store in question has been permanently banned from participation in the FAP program for trafficking, the determination is not particularly relevant to the immediate question. IPV most definitely cannot be found for associating with an accused trafficker.

The Administrative Law Judge, therefore, cannot say that the Department has proven their case by clear and convincing evidence and declines to find an IPV.

With regards to the credibility of the investigating agent, it was noted at the hearing that Department was pursuing recoupment far in excess of the amount of benefits spent at the store in question.

More specifically, Respondent spent [REDACTED] at the store in question. The Department sought to recoup this entire amount, even though three of the seven transactions made by the Respondent at that store do not fit the agent's own definition of trafficking patterns, i.e. high dollar amounts. The fact that the agent in question included these transactions in the total recoupment amount is enough to call the agent's credibility into question.

However, the Department sought a total recoupment amount of [REDACTED]. This is [REDACTED] in excess of the amount Respondent spent at the store in question. When asked about this discrepancy, the investigating agent alleged that several other high dollar transactions made at other stores were also indicative of trafficking, and should also be recouped.

The other stores, at which Respondent was alleged to have trafficked FAP benefits, included [REDACTED], which is an international, multi-billion dollar chain store, and one of the largest corporations in the United States.

In the investigative report (Department Exhibit 2), the agent specifically accuses Respondent of selling FAP benefits for cash.

When asked whether the agent was accusing [REDACTED] of engaging in FAP benefit trafficking, the agent demurred, and stated that this was not the case. Instead, the agent accused the Respondent of selling their FAP card, or perhaps buying food for others using the FAP card at [REDACTED].

Leaving aside the fact that the agent presented absolutely no evidence to support these allegations, the transactions the agent alleged constituted trafficking included high even dollar transactions at [REDACTED], which are transactions the agent stated previously were indicative of selling FAP benefits to a store for cash. In such instances of trafficking, the store is the purchaser of the benefits, meaning that by alleging trafficking violations by the Respondent at [REDACTED], the agent must have been accusing [REDACTED] of engaging in trafficking.

The agent also stated that it was highly unlikely that the Respondent would make high dollar purchases at stores like [REDACTED], without offering any evidence other than implication that somebody in the Respondent's economic position should not be buying food above a certain dollar level, regardless of the amount of benefits Respondent currently had on their EBT card.

Regardless, the agent offered no evidence to support these allegations. At most, the agent offered innuendo and speculation. The allegations, which must necessarily include a conclusion that a multi-billion dollar chain was engaging in food stamp trafficking, were so spurious as to instantly remove any credibility the testifying agent might have had.

When the case presented alleges that over half of the benefits sought for recoupment are a result of food trafficking at [REDACTED], and three of the transactions sought for recoupment do not even meet the agent's own definition of a trafficking pattern, the undersigned has no choice but to conclude that the investigating agent has not performed due diligence in investigating the case in question. As such, the undersigned finds that the agent does not have credibility, and any testimony presented by the agent is disregarded.

Therefore, the undersigned cannot hold that the benefits sought to be recouped in this case, [REDACTED], were used for trafficking, as there is no evidence beyond the stated trafficking patterns, discussed above. As such, any recoupment in this case must be denied.

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, concludes that:

1. Respondent did not commit an IPV.
2. Respondent did not receive an OI of program benefits in the amount of [REDACTED] from the following program(s) FAP FIP MA.

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



Robert Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/13/2014**
Date Mailed: **10/13/2014**

RJC / 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:

[REDACTED]