

**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.: 14-005819
Issue No.: 3005
Case No.: ██████████
Hearing Date: October 23, 2014
County: Alpena

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 23, 2014, from Detroit, Michigan. The Department was represented by ██████████. 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 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 September 17, 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 use FAP benefits for lawful purchases.
5. Respondent did not have an 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 October 1, 2011, to March 31, 2012 (fraud period).
7. During the alleged fraud period, the Department alleges that Respondent trafficked \$338.90 in FAP benefits issued by the State of Michigan and received an OI in FAP benefits in the amount of \$338.90.
8. This was Respondent's first alleged IPV.
9. 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 requested IPV hearings prior to October 1, 2014 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.

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 because she trafficked her FAP benefits at [REDACTED] (Store). Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp. 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2014), p. 66. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (July 2014), p. 3. See also 7 USC 272.2 (definition of "trafficking").

The Department presented evidence that Store was found in administrative proceedings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had its authorization to accept FAP benefits permanently revoked. The Department also presented the USDA's investigative report that concluded that the owner and/or manager of Store directed employees to sell ineligible items, specifically, synthetic drugs, alcohol and cigarettes to store customers in exchange for FAP benefits. The Department argued, based on the USDA investigation, that the synthetic drugs were sold in conjunction with some form of frozen meat, or a what was identified as a "meat bundle," to conceal the trafficking. The Department further argued that the "meat bundles" were sold for \$37.99, \$75.98, or a derivative of this amount, when really, the eligible food item would only be worth \$7-\$10, that cigarettes were sold for \$19.99 and that the synthetic drugs and coffee bundles were sold for \$32.99. The Department relied on statements and affidavits provided to USDA Agents by employees and customers of Z's to support its findings, and presented photographic documentation of meat plus synthetic drug purchases made by undercover investigators. (Exhibit 1, pp. 15-65).

To support a trafficking case against Respondent, the Department presented Respondent's FAP transaction history at Store showing Respondent's purchases by date, time and amount. The Department highlighted two transactions on October 14, 2011, each for \$19.99, that it alleged were for the purchase of cigarettes and a transaction on December 11, 2011, for \$32.99 that it alleged was for the purchase of a coffee and synthetic drug bundle. While the investigative report references the fact that Store illegally sold cigarettes and coffee bundled with synthetic drugs, the evidence presented does not clearly establish that these trafficking transactions resulted in purchases of \$19.99 or \$32.99.

The remaining transactions highlighted by the Department on Respondent's transaction history at Store concern five transactions for \$37.99 and one transaction for \$75.98. The considerable support in the USDA investigative report that "meat bundles" involving the sale of synthetic drugs were sold in amounts of \$37.99 or \$75.98 (a multiple of \$37.99), coupled with the fact that Respondent had five transactions in a three-month period for exactly \$37.99, two of which were on the same day three minutes apart, and

another the next month for \$75.98, was sufficient to establish, by clear and convincing evidence, that these transactions involved trafficking at Store.

Thus, the Department has established that Respondent committed an IPV based on trafficking.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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 (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. 13.

In this case, the Department established that Respondent committed a trafficking IPV. Because this was Respondent's first FAP IPV, he is subject to a one-year FAP 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. The OI amount for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual's admission, or (iii) 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, which can be established through circumstantial evidence. BAM 720, p. 8.

As discussed above, the FAP transaction history presented by the Department supported the Department's allegations of trafficking with respect to the five \$37.99 transactions and the one \$75.98. Therefore, the Department is entitled to recoup or collect from Respondent \$265.93, the sum of the trafficked FAP 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 established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent received an OI of FAP program benefits in the amount of \$265.93.

The Department is ORDERED to reduce the OI to \$265.93 for the period October 1, 2011, to March 31, 2012, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/27/2014**

Date Mailed: **10/28/2014**

ACE / pf

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.

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