

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 14-009107
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 21, 2015
County: ALPENA

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 three-way telephone hearing was held on January 21, 2015, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included Respondent, ██████████.

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 August 14, 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 April 1, 2012 to April 30, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$37.99 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.

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 \$37.99 in April of 2012.

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.

Additionally, BEM 203 states that these FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

BEM 203 (October 2011), p. 2.

The Department's 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") conducted an investigation at the Store regarding food trafficking and 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);
- A Federal/State investigation concluded that the Store sold ineligible items, specifically synthetic drugs and cigarettes to Store customers in exchange for SNAP benefits;
- A Federal/State investigation concluded that the Store's scheme to mask the unauthorized SNAP purchases involved the sale of a designated food item for which the sale price was inflated to cover the cost of the drugs;

- A Federal/State investigation concluded that a “meat bundle” worth approximately \$7-\$10 was sold for \$37.99 to cover the cost of the drugs which were surreptitiously included in the sale;
- Respondent had a transaction for \$37.99 at the Store which is consistent with trafficking pattern stated above; and
- Thus, Respondent trafficked 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 June 20, 2013. See Exhibit 1, pp. 74-75; see also USDA letter dated May 28, 2013, pp. 71-73.

Second, the Department presented an USDA Report of Investigation (investigation report) that indicated the Store was involved in FAP trafficking. See Exhibit 1, p. 10. Specifically, the investigation report disclosed that the owner and/or manager directed his employees to sell ineligible items, including synthetic drugs and cigarettes, to store customers in exchange for SNAP benefits. See Exhibit 1, p. 11. The investigation report stated the Store has a limited inventory of eligible food items, and much of the Store’s inventory consists of automotive supplies, household goods, and other ineligible items. See Exhibit 1, p. 11.

From May 2012 through October 2012, the investigation report stated a series of undercover operations were conducted at the Store, where the owner and/or manager and various Store employees sold synthetic drugs to a confidential informant in exchanged for SNAP benefits. See Exhibit 1, p. 11. The investigation report stated the synthetic drugs were generally sold in conjunction with some form of frozen meat in order to conceal the sale of synthetic drugs in exchange for SNAP benefits. See Exhibit 1, p. 11. The investigation report included undercover transactions and photos of the synthetic drugs receiving during the undercover operations. See Exhibit 1, pp. 13 and 26-29.

Additionally, the investigation report and a Department Memorandum of Interview (memorandum) jointly stated that it received written sworn statements from employees and customers affirming the trafficking scheme taking place at the Store. See Exhibit 1, pp. 14-16 and 30-31. The investigation report and memorandum provided a summary and the actual written sworn statement from employees/customers affirming the trafficking scheme taking place. See Exhibit 1, pp. 14-16 and 32-60.

Third, the Department argued that the trafficking scheme includes the employees and/or manager selling a “meat bundle” worth approximately \$7-\$10 for \$37.99 to cover the cost of the drugs which were surreptitiously included in the sale. See Exhibit 1, pp. 4 and 30-60. In this case, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent’s FAP transaction history. See Exhibit 1, p. 76. Respondent’s FAP transaction history showed a purchase for \$37.99 on April 11, 2012, which was conducted at the Store. See Exhibit 1, p. 76. The Department argued

that Respondent's transaction for \$37.99 at the Store is consistent with trafficking pattern taking place at the Store.

At the hearing, Respondent argued that she was not involved in FAP trafficking. Respondent acknowledged that she did conduct a transaction at the Store on April 11, 2012. Respondent testified that she knew the Store owners; however, there were no other Stores open at the time and she needed to purchase food for her and her children. Respondent testified that she obtained a big bag of chicken and when she was about to purchase the food item, she testified that the Store employee offered her a synthetic drug with her purchase. Respondent testified that she refused the synthetic drug and purchased the big bag of chicken. The Store, though, still charged Respondent \$37.99 for the chicken, which the Department alleges that this amount is consistent with trafficking pattern. In response, Respondent testified that the prices at the Store are expensive. Respondent also testified that she reported anonymously the Store to DHS hotline.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV involving her FAP benefits.

First, the evidence established that the Store was involved in FAP trafficking by selling synthetic drugs and cigarettes to Store customers in exchange for SNAP benefits. The Department further presented evidence that the Store's scheme to mask the unauthorized SNAP purchases involved the sale of a designated food items for which the sale price was inflated to cover the cost of the drugs. For example, the evidence indicated the Store would sell the customer a "meat bundle" worth approximately \$7-\$10 for \$37.99 to cover the cost of the drugs which were surreptitiously included in the sale. This example was supported by the undercover operations conducted at the Store and the multiple written sworn statements from employees and customers affirming the trafficking scheme taking place. See Exhibit 1, pp. 11-60.

Second, Respondent alleges that she was not involved in the FAP trafficking by her refusal to accept the synthetic drug offered to her by the Store. However, this Administrative Law Judge (ALJ) does not find the Respondent credible. This ALJ does not find Respondent credible that she would refuse the synthetic drug, but then allow the Store employee to still charge her exactly \$37.99 for chicken. Respondent's transaction for \$37.99 questions her credibility because the evidence indicates this transaction amount is consistent with the trafficking pattern taking place at the Store. See Exhibit 1, pp. 11-60. As such, the Department presented Respondent's FAP transaction history that indicated she had a transaction for \$37.99 at the Store. See Exhibit 1, p. 76. This presented persuasive evidence that Respondent committed an IPV involving her FAP benefits because Respondent's transaction for \$37.99 is consistent with trafficking pattern taking place at the Store. 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 April 1, 2012 to April 30, 2012 and that Respondent trafficked \$37.99 during this time period.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. Thus, it is found that Respondent received an OI of program benefits in the amount of \$37.99 from the FAP program. See BAM 720, p. 8.

DECISION AND ORDER

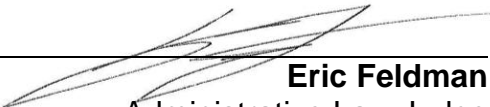
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$37.99 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$37.99 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/28/2015**

Date Mailed: **1/28/2015**
EJF / cl

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]