

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

**IN THE MATTER OF:**

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

Reg. No.: 14-011015  
Issue No.: 3005  
Case No.: ██████████  
Hearing Date: April 27, 2015  
County: WAYNE-31 (GRANDMONT)

**ADMINISTRATIVE LAW JUDGE: Robert J. Chavez**

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and 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, telephone hearing was held on April 27, 2015 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared was represented pro se.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) 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. The Department's OIG filed a hearing request on September 11, 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. The Department's OIG indicates that the time period it is considering the fraud period is August, 2013.
5. During the fraud period, Respondent allegedly trafficked ██████ in benefits by the State of Michigan.
6. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████.
7. This was Respondent's first alleged IPV.
8. 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 Health and Human Services (formerly the Department of Human Services) Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and 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 and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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 (2011), 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 (2012), p. 10.

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. 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. 13.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, or intentionally committed an act known to be trafficking, with regard to the FAP program. The Department must not only prove that the Respondent committed an act, but that there was intent to commit the act. This intent requirement specifically includes incidents of trafficking; therefore, it is possible to unintentionally traffic benefits, if the Respondent is unaware that the act being committed constitutes trafficking.

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 intentionally trafficked their FAP benefits.

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 intentionally trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent intentionally committed an act that would constitute trafficking.

The Department has not met their burden of proof in the current case.

First, the undersigned must note that while the store owner in question has been found responsible for FAP trafficking at this point in time, the store is not the subject of this administrative hearing; the Respondent is the subject, and the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

The Department has also shown that the store in question was an industrial and commercial store, specializing in large, bulk purchases of meat. Respondent's transaction history (Department Exhibit 4) shows that Respondent made exactly two, high dollar even purchases at the store. Such purchases, given the product involved, would usually consist of large amounts of bulk, commercial grade meat, which, under all accounts, would be a highly unlikely purchase, given that such purchases would completely expend Respondent's FAP allotment for an entire month, leaving no benefits for the purchases of other items. As such, the undersigned finds the nature of the transactions highly suspect.

Furthermore, the Department testified that the Respondent had reported homelessness during the time periods in question, making the storage of such product impossible. The investigating agent testified that Respondent reported homelessness when applying for FAP benefits. The undersigned would normally find the Department's argument compelling.

However, Respondent testified at the hearing that he did make the purchases in question, and furthermore, stored the product in the homes of family members. Respondent also testified that the purchase was made in order to bring food to a picnic for Labor Day. Respondent was adamant that he never exchanged FAP benefits for cash.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Respondent's testimony did not have the hallmarks one would find with a rehearsed story. Furthermore, the dates of the purchases are reasonably compatible with a Labor

Day purchase, and Respondent only had two purchases, within a short period of time, at the store in question.

Given that Respondent's story was logical, fit the facts in question, and given the purchase history did not indicate a larger history of FAP trafficking, the undersigned finds the Respondent credible, and gives the testimony full weight.

As there are no other hallmarks of trafficking that would add suspicion to Respondent's story, the undersigned finds that the Department has not proven by clear and convincing evidence that Respondent bought or sold benefits for cash.

However, this does not mean that Respondent did not traffic their FAP benefits.

Respondent, in the testimony presented, specifically stated that the food was bought in order to share with a large contingent at a Labor Day picnic. As stated, the undersigned finds this testimony credible.

Per the Food Stamp Act, transferring coupons is a violation of the act. Using coupons to buy food, and then transferring that food to another would be, in essence, transferring coupons, even with the intermediary step. Thus, by buying large amounts of food, and not consuming that food himself, Respondent trafficked FAP benefits.

That being said, the Department has failed to provide evidence that Respondent was aware that this act constituted trafficking, and intentionally violated the Food Stamp Act. No documents were presented that showed that Respondent was ever notified that transferring and sharing food was prohibited, and Respondent, in the course of his testimony, did not seem aware that sharing food was prohibited. Respondent specifically presented his testimony to show that he had not trafficked benefits; he was not aware that his testimony was an admission to trafficking.

Therefore, the undersigned holds that Respondent did not intentionally traffic FAP benefits, though trafficking did occur. As such, the undersigned declines to find IPV, as an intentional violation of the act for the purpose of defrauding the agency is required for such a finding.

However, trafficked benefits must be recouped. By Respondent's own testimony, 50% of the purchased benefits were transferred to the people at the picnic, and 50% of the product bought was consumed by the Respondent himself. Therefore, the Respondent must pay back 50% of the benefits that were unintentionally trafficked.

The purchases at issue totaled [REDACTED]. 50% of [REDACTED]. Therefore, Respondent is responsible for [REDACTED] in trafficked benefits, and this [REDACTED] must be recouped.

