

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

IN THE MATTER OF:



Reg. No.: 14-011782
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 7, 2015
County: WAYNE-DISTRICT 35 (REDFOR)

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 April 7, 2015, from Lansing, 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 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 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 September 23, 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 received Department Publication "How to Use Your Michigan Bridge Card," explaining in detail that the misuse of food benefits is a violation of state and federal laws punishable by disqualification from the program, fine, prison or all three and repayment of the food benefits. DHS-Pub-322 (11-10), p 13.
5. Between August 5, 2012, and June 17, 2013, Respondent had three transactions at the Twins Party Store. (Dept. Ex A, p 48).
6. An investigation of the Twins Party Store by the USDA revealed the owner failed to submit sufficient evidence to demonstrate that the owner had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program. As a result, [REDACTED] was permanently disqualified from the Supplemental Nutrition Assistance Program on March 11, 2014. (Dept. Ex A, pp 12-22).
7. Between August 1, 2012, and June 30, 2013, the average monthly food stamp redemption amount for stores in the area of Twins Party Store was [REDACTED]. [REDACTED] average monthly food stamp redemption amount for the same period was [REDACTED]. (Dept. Ex A, p 22, 24-47).
8. Respondent received [REDACTED] in Michigan FAP benefits from August 1, 2012, through June 30, 2013. Respondent trafficked [REDACTED] in FAP benefits from the State of Michigan during the fraud period of August 1, 2012, through June 30, 2013, at the [REDACTED]. (Dept. Ex A, p 4).
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
10. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

11. This was Respondent's first alleged IPV.
12. 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

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.

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 following are the relevant policy statements and instructions Department caseworkers follow.

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 \$500 or more, **or**
 - the total OI amount is less than \$500, **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, p 12 (10/1/2014).

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 (10/1/2014), 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.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p 15. 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 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/2013), 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.

The 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 (10/1/2014).

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. 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.

The length of the disqualification period depends on the dollar amount of the FAP benefits trafficked. A person is disqualified for life for a FAP trafficking conviction of [REDACTED] or more. The standard IPV disqualification period is applied to FAP trafficking convictions less than \$500. See Disqualification in BAM 720, Intentional Program Violation. BEM 203, p 3 (1/1/2015).

In this case, this is Respondent's first IPV.

Overissuance (OI)

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.

A FAP recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

Here, the Department has established that Respondent was aware that misuse of his food benefits is a violation of state and federal laws for which he may be disqualified from the program, fined, put in prison, or all three and repayment of the food benefits. (Dept. Ex A, pp 49-64).

In this case, the [REDACTED] was permanently disqualified from the Supplemental Nutrition Assistance Program on March 11, 2014, because the owner failed to submit sufficient evidence to demonstrate that the owner had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program, not because there was evidence of FAP trafficking. No evidence was presented that Respondent fraudulently used, transferred, altered, acquired or possessed coupons, authorization cards or access devices. There was also

no evidence that Respondent redeemed or presented for payment coupons known to be fraudulently obtained or transferred.


The only evidence presented of possible trafficking was that the [REDACTED] average transactions were [REDACTED] higher than neighboring party stores. Moreover, there was no affidavit from a store owner of how much a client could have reasonably trafficked in that store. Without more, this Administrative Law Judge cannot find under the clear and convincing standard that Respondent trafficked his FAP benefits at the Twins Party Store.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits in the amount of [REDACTED] from the FAP program.

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



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/9/2015**

Date Mailed: **4/9/2015**

VLA/sw

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:

