

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

**IN THE MATTER OF:**



Reg. No.: 14-011861  
Issue No.: FOOD ASSISTANCE PROGRAM  
Case No.: [REDACTED]  
Hearing Date: April 09, 2015  
County: KENT-DISTRICT 1 (FRANKLIN)

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**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 9, 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 25, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has 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 her responsibilities as a FAP recipient, including not allowing other to use her EBT card and not trafficking in FAP benefits, and that fraudulent participation in FAP could result in criminal or civil or administrative claims.
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 November 1, 2013, through December 30, 2013, (fraud period).
7. During the fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
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 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1000 or more, **or**

- The total 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 (5-1-2014), 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 (5-1-2014), 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.

An IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700 p. 8, BAM 720, p. 2.

“Trafficking” is the buying or selling of FAP benefits for cash or consideration other than eligible food; selling products purchased with FAP benefits for cash or consideration other than eligible food; or purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p. 2.

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.

The above cited BAM 700 and 720 policy excerpts indicate intent is not needed for a suspected IPV based on FAP trafficking. However, pursuant to 7 CFR 273.16(e)(6) the criteria for determining an IPV still includes clear and convincing evidence that the client has committed, and intended to commit, an IPV. Further, 7 CFR 273.16(c)(2) sets out the definition of an IPV, which includes intentionally committing 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) is an IPV.

In this case, the Department asserts that the Respondent trafficked in FAP benefits during the fraud period. The Respondent made use of her FAP benefits at a business known to engage in FAP trafficking. Respondent had a few transactions at this store that were suspicious for trafficking because they were for an even dollar amount and/or well above the average transaction amount for this store.

The OIG Regulation Agent included a summary of his interview with Respondent in the Investigation Report. Respondent reported that she is the only one that uses the EBT card. When shown the suspicious transactions, Respondent stated she did not do the suspicious transactions and indicated her boyfriend at the time must have. Respondent acknowledged that her boyfriend at that time was not on the FAP case. It is noted the use of the EBT card would require that the person have the PIN number for the card.

Based on the documentation regarding the infrastructure, inventory, and logistics of the store, it would be unwarranted to find that Respondent's transactions were conducted without the presence of fraud. The record also contained a signed Assistance Application dated July 10, 2012. By signing this application form, Respondent certified that she received, reviewed, and agreed with the sections in the assistance application information booklet that explained how to apply for and receive help. The information booklet sections include things you must do and important things to know. In these sections, FAP trafficking, IPV's, disqualification and repayment of benefits is addressed. In addition, the evidence did not show that Respondent had an apparent physical or mental impairment that limited her understanding or ability to fulfill these responsibilities.

The Department has established by clear and convincing evidence that Respondent intentionally trafficked in FAP benefits during the fraud period. Based on this evidence, this Administrative Law Judge finds that the Department has established an intentional program violation based on FAP trafficking.

### **Disqualification**

A court or hearing decision that finds a client committed 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. BAM 720, p. 16. 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 evidence of record shows that Respondent committed her first FAP IPV, which carries a 12 month 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 FAP 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, documentation used to establish the trafficking determination contained an Electronic Benefit Transfer (EBT) History of FAP purchases Respondent made at the store during the fraud period. The documentation of Respondent's purchases was sufficient to establish the alleged amount of trafficked FAP benefits, \$ [REDACTED]. Accordingly, the OI amount is \$ [REDACTED] during the above-mentioned fraud period.

### **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 did receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP in accordance with Department policy.



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Colleen Lack  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

Date Signed: **4/10/2015**

Date Mailed: **4/10/2015**

CL/hj

**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:

