

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

IN THE MATTER OF:

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

Reg. No.: 14-015054
Issue No.: 3005
Case No.: ██████████
Hearing Date: March 18, 2015
County: Wayne (41-Fort Wayne)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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 March 18, 2015, from Detroit, Michigan. The Department was represented by ██████████
████████████████████

- Participants on behalf of Respondent included: .
- 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
 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 November 7, 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 to report to the Department any changes that would affect her benefits.
5. Respondent had 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 June 11, 2012, through December 31, 2012, (fraud period).
7. During the fraud period, Respondent was issued \$814.94 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$814.94.
9. This was Respondent's first second third alleged IPV.
10. 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 (October, 2014), p. 4.

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. 5; BAM 720, p. 12.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 5 .

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 \$814.94 of her FAP benefits at [REDACTED] (Store 1) and [REDACTED] (Store 2). 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) (January 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 2013), p. 3.

The Department presented evidence that Store 1 and Store 2 were found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had their authorizations to accept FAP benefits revoked. To support a trafficking case against Respondent, the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when she used her FAP benefits at Store 1 and Store 2.

To support its case against Respondent, the Department presented a FAP transaction history for Respondent showing her FAP purchases at Store 1 and Store 2 by date, time and amount. Respondent used her FAP benefits at Store 1 and/or Store 2 multiple times each time she was at either establishment, with transactions within minutes of one another, often with high dollar total amounts. For example, on November 11, 2012, Respondent had two transactions at Store 2 within one minute totaling \$164.99. Later that same day, Respondent had two more transactions at Store 1 totaling \$149.98, within one minute of each other.

On December 9, 2012, Respondent had two transactions in the same minute totaling exactly \$199.98. On the same day, Respondent had two more transactions within one minute totaling \$133.44. Such back-to-back transactions were consistent with the Department's testimony that the USDA investigation's finding that the Stores used multiple transactions on a single day in order to mask the high total dollar amount of the transactions.

The Department pointed out that Stores were gas station convenience stores selling mostly low-cost snack foods with a limited stock of other eligible food items, no shopping carts or baskets, and limited counter space. In addition, the Department presented documentation to establish that the cash register area is enclosed with bullet-proof glass and blocked by a turnstile, making it impractical to purchase large amounts of food or to support the high volume of transactions that were occurring in short amounts of time. The Department also noted that there were many back-to-back transactions either at the same store, or one at one store and the other at the other store - activity that the USDA's investigation revealed was indicative of trafficking.

A review of the transactions at Store 1 and Store 2 by Respondent highlighted by the Department, coupled with evidence that Store 1 and Store 2 are trafficking establishments and testimony concerning the Stores' limited abilities to handle large transactions, was sufficient to establish, by clear and convincing evidence, that Respondent trafficked at both stores. Thus, the Department has established that Respondent committed an IPV.

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, 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. 1.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV by trafficking her FAP benefits. Because this was Respondent's first IPV, she is subject to a one-year disqualification under the FAP program.

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 Department presented clear and convincing evidence, through its testimony and Respondent's transaction history, to support its allegation that Respondent trafficked the identified transactions on the transaction history for Store 1 and Store 2. The Department testified that it excluded FAP transactions that it concluded could be legitimate food purchases and contended that Respondent's remaining transactions evidenced FAP trafficking because they were for high dollar amounts, substantially more than the \$5 which is common in comparably-sized convenience stores in the same location. The Department established that these remaining transactions totaled \$814.94. Because the Department's evidence established that these transactions were trafficked FAP benefits, the Department is entitled to recoup or collect that amount from Respondent.

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 \$814.94 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$814.94 in accordance with Department policy.
- reduce the OI to \$ _____ for the period _____, and initiate recoupment procedures 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.



Michael J. Bennane
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/26/2015**

Date Mailed: **3/26/2015**

MJB / 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.

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]