

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015136
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 21, 2015
County: Wayne (41) Fort Wayne

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 21, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], 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 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 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 November 6, 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 was aware of the responsibility to not allow someone else to use his Bridge Card, and to only use it to purchase FAP-approved items.
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 August 1, 2013, to September 30, 2013, (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV.
10. 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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.

- FAP trafficking overissuances 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 \$500 or more, or
 - the total 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 (10/1/14), p. 14; ASM 165 (5/1/13), 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 (5/1/14), 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, Respondent's card was used to make two suspicious, large purchases at [REDACTED]. The first was on August 15, 2013. His card was used to pay \$ [REDACTED] toward a total purchase of \$ [REDACTED] made by [REDACTED]. [REDACTED] used his own Bridge card to pay for the balance of the purchase. Included in that purchase were five packages of ketchup. Each package included two large bottles. Also purchased were four packages of chips.¹ Other questionable items were, to name a few, six "cheese sauces", two bags of hash browns, beef patties, jars or cans of jalapenos, and 160 slices of American cheese. See Exhibit A Page 33.

On September 13, 2013, Respondent's card was used to make a second purchase at [REDACTED]. That time, his card was used to pay \$ [REDACTED] toward a total cost of \$ [REDACTED]. See Exhibit A Page 34. On that occasion his card was used along with a card belonging to [REDACTED]. A package of 144 cookies, two packages of V-8 Splash, sausage, four more ketchup bundles, frozen biscuits, and a number of other items are on the receipt. The combined receipts seem like the kinds of purchases that would be made by someone operating a commercial food establishment.

Respondent testified that he has been in and out of several treatment facilities over the past ten years. At some facilities he has to provide them with his Bridge Card and his PIN (the four-digit code used to access his benefits). The Department's witness testified that some residential facilities, such as the [REDACTED], require their recipients to turn in their card and PIN which are then used to pay for their meals. The facility has its own account with which to bill the Department; the facility is not allowed to take the card and make purchases at retail or wholesale stores.

Respondent also testified that he knows [REDACTED] but he does not know [REDACTED]. He also indicated that he has been a FAP recipient for ten years or more, and he did not believe that two questionable purchases within ten years is indicative of any pattern. He mentioned stories of other FAP recipients who have been engaged in a pattern of trafficking for years.

After considering the documentary evidence as well as the testimony of the witnesses, the undersigned is persuaded that the Department has established by clear and convincing evidence that Respondent committed an IPV. He allowed his Bridge card to be used by someone else for unauthorized purchases. Many of the items purchased at [REDACTED] on those two dates cannot reasonably be expected to be consumed by one person before the food spoils. Respondent knew that he was not allowed to "sell, trade or give away [his] Food Assistance benefits, PIN or Michigan Bridge Card" and could not "allow a retailer to buy [his] food benefits in exchange for cash." (Exhibit A Page 57.)

¹ The undersigned is familiar with purchases at [REDACTED]. For several years [REDACTED] required a member to buy two bags of potato chips, tortilla chips, etc. at a time. It is unknown whether this receipt reflects four or eight bags of chips, or possibly a large box of single-serving-size bags of chips.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (4/1/14), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, Respondent committed an IPV by trafficking his FAP. Even though the Department presented evidence of just two instances, those are sufficient. There is no minimum number of transactions. There is no minimum dollar amount for trafficking. Respondent is to be disqualified from receiving benefits through the FAP program for one year.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, Respondent's FAP was used to make two purchases that were unlawful. He used (or allowed to be used) \$ [REDACTED] in FAP benefits to make unlawful purchases. Those amounts are to be recouped.

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 received an OI of FAP program benefits in the amount of \$ [REDACTED]

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

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/22/2015**

Date Mailed: **4/22/2015**

DJ/jaf

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

