

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

IN THE MATTER OF:

████████████████████
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Reg. No.: 14-015480
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 29, 2015
County: WAYNE-DISTRICT 19
(INKSTER)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 29, 2015, from Detroit, Michigan. The Department was represented by ██████████ 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 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 14, 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 that trafficking of benefits is unlawful and a violation of policy and could result in a disqualification from receipt of future benefits and recoupment of issued benefits.
5. Respondent had no 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 April 1, 2011 to September 30, 2011 (fraud period).
7. The Department alleges that Respondent trafficked ██████ in FAP benefits.
8. This was Respondent's first alleged IPV.
9. On March 5, 2015, the Michigan Administrative Hearing System (MAHS) sent both parties a notice of hearing, which scheduled a hearing on April 8, 2015.
10. Respondent's notice of hearing was mailed to her last known address and was returned by the US Post Office as undeliverable.
11. On March 10, 2015, the Department requested an adjournment.
12. On March 10, 2015, this Administrative Law Judge (ALJ) sent both parties an order granting the adjournment. Again, though, Respondent's notice of adjournment order was returned by the US Post Office as undeliverable.
13. On March 26, 2015, the MAHS sent both parties a notice of hearing, which rescheduled the hearing for April 29, 2015.
14. Respondent's rescheduled notice of hearing was mailed to her last known address and was 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

In this case, the Department alleged that Respondent committed an IPV of FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent at the address identified by the Department as the last known address. After the mailing of the Notice of Hearing, it was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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. 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.

BAM 700 defines trafficking as:

- The buying or selling of FAP benefits for cash or consideration other than eligible food. Examples would be liquor, exchange of firearms, ammunition, explosives or controlled substances.
- Selling products purchased with FAP benefits for cash or consideration other than eligible food.
- Purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits.

BAM 700, p. 2.

Additionally, BEM 203 states that 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.

BEM 203 (January 2009), p. 2.

The Department's argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as "Store"), where the United States Department of Agriculture ("USDA") conducted an investigation at the Store regarding food trafficking and determined that the Store was engaged in food trafficking and ultimately led to the Store's permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area;
- Store has a limited supply of food and counter space (physical means) where it is unlikely that someone would make regular and/or large purchases of food;
- over a period of time, Respondent had high dollar and closely related transactions at the Store which is consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking, which resulted in the Store's permanent disqualification from SNAP on May 8, 2012. See Exhibit 1, pp. 12-14.

Second, the Department argued that the Store had a limited supply of food and counter space (physical means) where it is unlikely that someone would make regular and/or large purchases of food. See Exhibit 1, pp. 3 and 11. Also, the Department presented pictures in an attempt to demonstrate the above description of the Store's layout. See Exhibit 1, pp. 15-16.

Third, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent's FAP transaction history. See Exhibit 1, p. 28. For example, Respondent had large purchases for the following dates: [REDACTED] [REDACTED] See Exhibit 1, p. 28. In fact, on April 17, 2011, Respondent had one transaction in the amount of [REDACTED] then two minutes later, Respondent had another transaction in the amount of [REDACTED]. See Exhibit 1, p. 28.

Based on the foregoing information and evidence, the Department established that Respondent committed an IPV involving her FAP benefits. First, the evidence that the

Store had limited counter space was persuasive as there was a barrier glass, which would make it difficult to purchase high dollar/closely related transactions. See Exhibit 1, pp. 15-16.

Second, the Department's main argument was based on her FAP transaction history, which presented persuasive evidence that Respondent committed an IPV involving her FAP benefits. The Department did present several transactions that were suspicious because Respondent had high dollar and closely related transactions at the Store which is consistent with traditional trafficking patterns. See Exhibit 1, p. 28. This evidence is persuasive to conclude that the Respondent is involved in trafficking. In summary, the Department established by clear and convincing evidence that Respondent trafficked her FAP benefits at the Store.

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, pp. 15-16; BEM 708 (April 2014), 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, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

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.

For FAP trafficking, the OI 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

In the present case, it is found that Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program. See BAM 720, p. 8. It should be noted that the Department calculated an OI amount of [REDACTED] however, the Department miscalculated the total OI amount and is only entitled to the OI amount of \$ [REDACTED]. See Exhibit 1, p. 28.

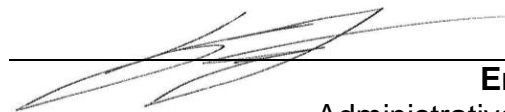
DECISION AND ORDER

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 benefits.

The Department is ORDERED to reduce the OI to [REDACTED] for the period April 1, 2011 to September 30, 2011, and initiate recoupment/collection procedures in accordance with Department policy.

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



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/29/2015**

Date Mailed: **4/30/2015**

EJF/tm

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.

