

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

IN THE MATTER OF:



Reg. No.: 2014-13434
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 12, 2014
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 12, 2014 from Detroit, 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
 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 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 25, 2013, 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 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, 2012 to December 31, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$3,250.12 in FIP FAP SDA CDC MA benefits.
8. This was Respondent's first second third alleged IPV.
9. 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 271.1 to 285.5. The

Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 (July 2013), p. 12.

In this case, the Department alleged that Respondent committed an IPV of her FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing was mailed to Respondent via first class mail at the address identified by the Department as the last known address. Subsequent to the mailing, the notice was not returned by the United States Postal Service as undeliverable. However, the Department testified that the accompanying documentation (hearing packet) was mailed to Respondent's last known address and was returned. 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. Based on the above information, the Notice of Hearing was not returned undeliverable and only the hearing packet. 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 (July 2013), 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, the Department alleges that Respondent committed an IPV of her FAP benefits because she trafficked \$3,250.12 between April 1, 2012 to December 31, 2012.

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.

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

- there exists a two food stores (same owner) (hereinafter referred to as "Store 1" and "Store 2"), where the United States Department of Agriculture ("USDA") conducted an investigation at both Stores regarding food trafficking;
- Store 1 and 2 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 1 and 2 has a limited supply of food and counter space 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 Store 1 and 2 which is consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented as evidence an e-mail from the USDA detailing a brief synopsis of the trafficking being conducted at Store 1 and 2. See Exhibit 1.

Second, the Department showed both Store 1 and 2 average transactions between January 2011 to April 2013. See Exhibit 1. Store 1 and 2 average transactions were higher than other comparable establishments during the alleged fraud period. For example, in September 2012 (during the alleged fraud time in this case), Store's 2 average transaction was \$31.86 and Store's 1 average transaction was \$25.54. See Exhibit 1. However, other comparable establishments had much lower average transactions, i.e., \$4 to \$5. See Exhibit 1.

Third, the Department argued that both Stores had a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food. The Department's OIG investigative report stated that each store is operated by the same individual and are located within one block of each other. See Exhibit 1. It should be noted that the Department presented a map of how far each store is from one another. See Exhibit 1. The Department's OIG investigative report stated that each store is a gas station/convenience store that carries a moderate inventory and the stores have no shopping carts or baskets, one point of sale device, the cash register areas are enclosed with bullet-proof glass making it impractical to purchase large amounts of merchandise and impossible to conduct these transactions in a short period of time. See Exhibit 1. In summary, the Department infers that both Stores did not have the food items or the physical means to support high dollar transactions and multiple purchases in a short time period.

Also, the Department presented pictures in an attempt to demonstrate the above description of both Stores layout. A review of the photos does demonstrate that each Store has purchasable foods and non-purchasable foods. See Exhibit 1. The Department, though, did present a photo of the bullet proof barrier, which would make it difficult to purchase high dollar transactions at Store 1 and 2. See Exhibit 1.

Fourth, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent's FAP transaction history, which showed that between April 12, 2011 to December 7, 2012, she spent \$3,250.12 of her FAP benefits at Store 1 and 2. See Exhibit 1. For example, on June 5, 2012, Respondent made five separate purchases within three minutes and the total was \$205 at Store 1. See Exhibit 1. On September 5, 2012, Respondent made three purchases within one minute and the total was \$119.97 at Store 2. See Exhibit 1. Respondent repeated this same pattern of making purchases at the same time or within minutes of each other at Store 1 and 2. See Exhibit 1. Also, on July 5, 2012, Respondent made three purchases within one minute of each other at Store 1 and then four minutes later, Respondent made

another three purchases at Store 2. See Exhibit 1. Respondent also repeated this pattern between both Stores.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving her FAP benefits. First, the evidence that the Store 1 and 2 had limited counter space was persuasive as there was a bullet proof barrier, which would make it difficult to purchase high dollar transactions. See Exhibit 1. However, the pictures also showed food product that are intended for consumption.

Nevertheless, 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. For example, on June 5, 2012, Respondent made five separate purchases within three minutes and the total was \$205 at Store 1. See Exhibit 1. On September 5, 2012, Respondent made three purchases within one minute and the total was \$119.97 at Store 2. See Exhibit 1. Respondent repeated this same pattern of making purchases at the same time or within minutes of each other at Store 1 and 2. See Exhibit 1. Also, on July 5, 2012, Respondent made three purchases within one minute of each other at Store 1 and then four minutes later, Respondent made another three purchases at Store 2. See Exhibit 1. Respondent also repeated this pattern between both Stores. This is highly suspicious that someone would conduct so many closely related transactions at Store 1 and 2 either at the same time or within minutes apart. Also, it is highly suspicious that someone would conduct transactions at Store 1 and then few minutes later conduct more transactions at Store 2 for high dollar amounts. This evidence is persuasive to conclude that the Respondent is involved in trafficking.

In summary, 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). The Department established by clear and convincing evidence that Respondent trafficked her FAP benefits at the Stores. A review of the evidence presented large transactions and closely related transactions at Store 1 and 2 that the Respondent could not reasonable purchase food items for consumption. Moreover, the Department presented credible evidence that Store's 1 and 2 average transactions were greater than transactions at comparable establishments. See Exhibit 1. Thus, the Department has established that Respondent committed an IPV involving her FAP benefits.

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. 15.

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. 16. 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. 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 this case, the Department's OIG indicates that the time period it is considering the fraud period is April 1, 2012 to December 31, 2012 and that Respondent trafficked \$3,250.12 between this time period.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. The Department was able to prove that Respondent was involved in FAP trafficking. The Department has satisfied its burden of showing that Respondent did receive an OI of program benefits. It should be noted that the FAP trafficking period should have begun in April 2011, rather than April 2012. This is supported by the fact that the Department included trafficking transactions that occurred during this time period. See Exhibit 1. These trafficking transactions happened in Store 1 (i.e., on April 12, 2011, Respondent conducted two transactions). See Exhibit 1. Nevertheless, the Department also established that Respondent committed an IPV involving her FAP benefits during this additional time period as well. Thus, it is found that Respondent received an OI of program benefits in the amount of \$3,250.12 from the FAP program. See BAM 720, p. 8.


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 did did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$3,250.12 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate collection procedures for a \$3,250.12 OI 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.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 25, 2014

Date Mailed: March 25, 2014

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

EJF/tlf

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