

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-16022
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Wayne County DHS #55

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 March 20, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED], the Respondent, and [REDACTED], son. [REDACTED] also provided interpretation services.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) 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 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 December 9, 2013, 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 her responsibilities and that fraudulent participation in FAP could result in criminal or civil or administrative claims.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2010 through September 30, 2012 (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 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 (7-1-2013), p. 12.

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 (7-1-2013), p. 7; 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 273.16(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 is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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. The store had limited food stock and expired food on the shelves. The store had very limited counter space for processing large purchases and did not have shopping carts or baskets. There were no coolers for storing large quantities of fresh meats. A review of the Respondent's benefits history of purchases at this store showed multiple high dollar purchases that are excessive for a store of this size, even dollar transactions or transactions ending in an unusual dollar/cent amount, and multiple purchases in short time period. Examples include: on November 8, 2010, Respondent made a purchase of \$ [REDACTED] on January 9, 2011 Respondent made a purchase of \$ [REDACTED] on June 6, 2011 Respondent made two purchases of \$ [REDACTED] the first at [REDACTED] and a second just one minute later at [REDACTED] and on March 5, 2012 Respondent made a purchase of \$ [REDACTED]

The Regulation Agent credibly testified that in the course of this IPV investigation he confirmed that Respondent had signed an Assistance Application. The Regulation Agent further testified that when he interviewed Respondent, she reported purchasing items like: fish, chicken, flour, chips, pop, 25 pound bags of rice, quail, spices, and vegetable oil; but Respondent could not recall the quantities of these products she had purchased at this store. It was noted that during the investigation of the store, there was no evidence quail had been sold there.

Respondent testified she purchased 90% of what her family eats at that store and it would be easy to have made large purchases of \$100 or \$200 there. Respondent stated she never received money from the store, but acknowledged she did receive some items, like paper towel, that she was not allowed to pay for. Respondent testified sometimes she would call in an order and the items would be delivered to her home. Respondent also indicated that when there was not enough of a balance on her FAP card, she was able to obtain items on credit and pay for them with the FAP card later. Respondent testified she was not aware of her responsibilities as a FAP recipient, such as not receiving items like the paper towel with the FAP benefits. However, Respondent's later testimony indicated she was aware that she could not purchase items like paper towel with the FAP card. Regarding the interview with the Regulation Agent, Respondent testified she purchased bird meat from this store, which she thought was quail.

Respondent's son testified that Respondent never took out cash from the FAP card, but acknowledged Respondent did purchase items on credit. Respondent's son also confirmed that orders Respondent called in were delivered to her home or sometimes he picked them up from the store for Respondent.

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. Respondent acknowledged purchasing items on credit when the FAP card did not have a sufficient balance, and that she would phone in orders that the store would deliver to her home. Further, Respondent acknowledges she received some items from the store she did not purchase. The Regulation Agent's credible testimony establishes that Respondent signed an Assistance Application for FAP. By signing this application form, the DHS 1171, 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. (See Department form DHS-1171) There was no evidence that Respondent was denied any request for interpretation services needed to understand the application materials. There was no evidence presented that Respondent had any physical or mental impairment(s) that would limit her understanding or ability to fulfill these requirements. Respondent's testimony regarding her lack of awareness of her responsibilities as a FAP recipient cannot be found fully credible. 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. 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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7-1-13), 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 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 IPVs 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 did commit an intentional program violation (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 for a period of 12 months.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 11, 2014

Date Mailed: April 11, 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.

CL/hj

cc:

