

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-16263
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 25, 2014
County: Macomb #20

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 25, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

PRELIMINARY MATTER

The Respondent, on questioning from the Administrative Law Judge stated no language barrier. Her [REDACTED] said that the Respondent's English was "good" and that he was fluent in English. He said he would help his [REDACTED] with a word or two if necessary during the hearing. Accordingly, he was instructed to provide the English version for any such translation. There were only a couple of small translations in this record and the spouse/witness followed the ALJ's instructions.

Participants on behalf of Respondent included: Mayen Mian, her spouse.

ISSUES

1. Did Respondent receive an over-issuance (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 11, 2013, to establish an OI and debt collection recoupment of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that the 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 engage in unauthorized transactions.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. She was a competent advocate in her own defense.
6. The Department's OIG indicates that the time period it is considering the fraud period is October 2010 through September 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan.
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 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) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family

Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

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 Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent 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. 6; BAM 720, p. 1.

An IPV is also suspected for a Respondent 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 Respondent 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; 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 OIG witness [REDACTED] provided credible, sufficient, un rebutted testimony and other credible evidence to establish that in August of 2012 a joint USDA-OIG investigation determined that Vendor's store – [REDACTED]; located at [REDACTED], was determined to have been trafficking FAP benefits. The Vendor's store had inadequate and expired inventory to support the dollar value of the redeemed EBT benefits. There were no carts, no baskets or bags to carry way the bulk of product which typical redemptions would require. Additionally, there was no optical scanner. The Vendor's employee – [REDACTED]

[REDACTED] Exhibit #1, pages 54 - 56.

Such exaggerated redemptions included multiple high dollar transactions, close proximity, even dollar and "unusual cents-ending anomalies." See Exhibit #1 at pp. 45 - 47. During the height of the Vendor's fraudulent activity, February and March of 2012, it was necessary to hire a security guard for "crowd control" as the lines to the business stretched "around the block" and cash was present on premises in large amounts. See Testimony of Drabek. As a result, the USDA-OIG investigators determined that the [REDACTED] was permanently disqualified from the SNAP program.

Between the dates of October 2010 through September 2012 the Respondent [REDACTED] was responsible for participating in 55 unauthorized transactions involving the misuse of her EBT card totaling \$ [REDACTED] in unauthorized redemption. The OIG established misuse of the Respondent's EBT totaling \$ [REDACTED] over-issuance of FAP benefits as well as her participation in an EBT-backed [and prohibited] line of credit at [REDACTED].

Supported by persuasive documentary evidence the OIG demonstrated the above referenced investigation as well as the vendor's disqualification from SNAP. The OIG established misuse of the Respondent's EBT totaling \$6,264.00 over-issuance of FAP benefits.

There was little SNAP approved food and that which existed was largely expired or spoiled. Exhibit #1, pp. 57 - 68. The OIG witness [REDACTED] said, "...for the amount of redemption presented each month by the Vendor - there should have been no expired food on his shelves." At the peak of its fraudulent activity the Vendor's gross sales dwarfed his local competitors by a factor in excess of 3:1. Exhibit #1, pp. 32 – 63.

The OIG testimony was supported by his documentary evidence and his personal observations having been at the store as part of the investigation See Department's Exhibit #1 – throughout.

The Respondent's witness testified that they bought 30 pounds of goat meat, 30 pounds of fish and 50 pounds of sugar at [REDACTED] each month and that the owner would deliver product to their home because he [the witness] was recuperating from gunshot wounds sustained in the course of a robbery while he was driving his cab.

The Respondent said that her husband was a victim and that they paid the owner of the [REDACTED] monthly or twice monthly when their EBT card was full – after taking the deliveries on credit – backed by the EBT card. She said they only bought food with the EBT card.

On cross examination the OIG agent established that the Respondent participated in a line of credit – which the Respondent acknowledged.

In closing, the Respondent acknowledged establishing the line of credit based on her EBT card with the Vendor. She said on questioning from the Administrative Law Judge that there were seven (7) people in her household. The OIG witness [Drabek] established that there were no co-signers on her EBT card, however.

The Respondent's witness, under oath, said they did nothing wrong and that the food benefit was not enough for [REDACTED]

On review, the evidence brought by the OIG established with clear and convincing weight that both an IPV and OI were committed by the Respondent. The Administrative Law Judge gave particular weight to the store employee's recorded statement that "...100 per cent of their customers exchanged EBT benefits for cash."

Furthermore, the Respondent admitted participating in the prohibited action of establishing a line of credit through her EBT account – wherein she paid later for present delivery service – although there was nothing which prohibited her from in person shopping.

Finally, irrespective of the tragic shooting event which befell her husband the Respondent admitted engaging in credit backed EBT purchasing – by itself a disqualifying act under the law.

Based on the testimony and the evidence, referenced above it is concluded that the OIG established, under a clear and convincing standard, that Respondent committed an IPV during the period of October 2010 through September 2012. See Department's Exhibit #1 – throughout.

The Respondent's first IPV violation - a one year disqualification is appropriate.

Based on the credible testimony and the documentary evidence, it is concluded that the OIG established, under a clear and convincing standard, that Respondent committed an IPV in this matter – resulting in OI of FAP \$ [REDACTED] for the period of October 2010 through September 2012.

The Respondent's first IPV violation - a one year disqualification is appropriate.

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent from receiving program benefits. BAM 720, p. 12. 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. 13.

Respondents 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 Medicaid. Respondents 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. See BAM 720, p. 16.

Over-issuance

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

In this case, the Department's witness, Drabek, established with that the Respondent received an OI of FAP benefits in the amount of \$ [REDACTED] Exhibit #1, page 47.

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 following program(s) FAP.

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.



Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/31/14

Date Mailed: 4/2/14

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.

DM/tb

cc:

