

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24942
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 1, 2014
County: Kent

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 April 1, 2014 from Lansing, 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 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 February 7, 2014, to establish an OI and 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 not 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.
6. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2011 through March 31, 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in 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) [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 \$ [REDACTED] or more, or
- the total OI amount is less than \$ [REDACTED] 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.

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 (July 2013), p. 7; 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 Department alleges that Respondent committed an IPV of her FAP benefits because she “trafficked \$ [REDACTED] between October [REDACTED] [REDACTED].”

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 food store (hereinafter referred to as “██████████”), where the United States Department of Agriculture (USDA) determined that ██████████ was engaged in food and contraband trafficking which ultimately led to its permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- ██████████ had a limited supply of non-expired food and it was unlikely that someone would make regular and/or large purchases of food owing to the lack of shopping carts or baskets for shoppers;
- ██████████ engaged in Electronic Benefit Transfer (EBT) transactions of FAP benefits with undercover officers whereby the officers received cash, credit, cigarettes and alcohol in exchange for EBT/FAP benefits;
- The owner of ██████████ has entered a plea of guilty in Federal Court and awaits sentencing; he has indicated that any transactions over \$██████████ are “likely” trafficking;
- over a period of time, Respondent purchased items at Shiva Market using her FAP benefits; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented no evidence from the USDA that the ██████████ engaged in FAP trafficking resulting in permanent disqualification – however the OIG agent did submit transaction/redemption history showing high dollar redemptions of EBT benefits.

Second, the Department argued that the ██████████ had a limited supply of non-expired food and it was a location where it is unlikely that someone would make large purchases of food owing to a lack of grocery carts, baskets and SNAP approved food

products. Also, the Department presented pictures in an attempt to demonstrate the non-complying and expired food products.

Third, the Department showed the [REDACTED] involving the Respondent - some of which were over \$ [REDACTED]. The [REDACTED] "...average transaction is reported in the summary as approximately \$ [REDACTED] to \$ [REDACTED] and that anything over \$ [REDACTED] is likely trafficking."

Based on the above information, the Department witness testified it is unlikely that someone would make purchases of food in the [REDACTED].

The Department contends that FAP trafficking often involves patterns of purchases based on statistical improbabilities – such as close purchases, high dollar transactions, etc. The OIG agent today also verified with photographic evidence the expired food that stocked the shelves of the Shiva Market.

Based on the foregoing information and the evidence, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. It is reasonable to conclude that Respondent could purchase items at the Shiva Market using her EBT card. Even though the [REDACTED] had no grocery carts or baskets – expired stock purchase while perhaps unwise, is not evidence of trafficking by the Respondent.

The pictures presented by the Department do indicate expired food products and identifies store employees and the various operational "stings" – this might be evidence for the criminal matter, but there was a failure of proof to link trafficking in this case with the Respondent – based on the this record.

The Vendor's statement that purchases of \$ [REDACTED] involved trafficking – was qualified as "likely" and was self-serving to the Vendor for his criminal case – it carried no weight today.

Pursuant to 7 CFR 273.16(e)(6) the criteria for determining an IPV still includes clear and convincing evidence that the Respondent has committed, and intended to commit, an IPV.

Furthermore, 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.

The Department did not provide documentation that Respondent was aware of her responsibilities that fraudulent participation in FAP could result in criminal or civil or administrative claims - such as a signed FAP application. The testimony did not address what was found during the course of the investigation that was the basis for the

Department's testimony that Respondent knowingly trafficked FAP benefits – other than her card being negotiated at [REDACTED].

In summary, the Department has not presented sufficient evidence that the Respondent intentionally trafficked in FAP benefits during the fraud period. Accordingly, the Department has not established by clear and convincing evidence that Respondent committed an IPV based on FAP trafficking.

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. The Department failed to establish by clear and convincing evidence¹ that Respondent trafficked her FAP benefits at the [REDACTED].

It should also be noted that the Department alleged multiple "recipients" said that they have trafficked FAP benefits at the [REDACTED]. This was not a statement attributed to the Respondent.

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent 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.

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 MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the Respondent is otherwise eligible. BAM 710 (July 2013), p. 2. 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. BAM 720, p. 16.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

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. Over-issuance was not established with clear and convincing evidence based on this record.

¹The Department's Exhibit was also troublesome for lack of evidence supporting the testimony of the OIG and for the lack of an index directing the reviewer to the appropriate passages - then, further marred by double page numbers on those items inadvertently discovered by the ALJ.

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 not commit an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

The Department is ORDERED to delete the OI and cease any recoupment action *if* initiated.



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

Date Signed: 4/22/14

Date Mailed: 4/22/14

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:

[REDACTED]