

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

IN THE MATTER OF:



Reg. No.: 2014-25746
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 1, 2014
County: Wayne (43)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on April 1, 2014 from Lansing, Michigan. The Department was represented by [REDACTED] 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent 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 12, 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 during the period of December 1, 2009 through August 31, 2010.

4. Respondent was aware that it was unlawful to use, transfer, acquire, alter, purchase, possess, or present for redemption or transport food stamps or coupons or access devices other than authorized by law.
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 they are considering the fraud period is December 1, 2009 through August 31, 2010 (fraud period).
7. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
8. The Department alleges that Respondent received an OI of FAP program in the amount of \$ [REDACTED]
9. This was Respondent's first 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] 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 1999 AC, Rule 400.3001 through Rule 400.3015.

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2013).

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700. A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 203. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720. If the court does not address disqualification in its order, the standard period applies. BAM 720.

In the present case, the record shows that [REDACTED], located at 1 [REDACTED] [REDACTED] the [store] was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). The store was engaged in “the buying or selling of FAP benefits for cash or consideration other than eligible food” as defined by BAM 700. The evidence showed that from 2009 through 2010, the store was a small gas station/convenience store with limited eligible food stock items that was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. While the store carried some eligible food items such as dairy products, breads, cereals, meats, pizza and fried chicken, many of the items were expired. A federal investigation revealed that store patrons confessed that they trafficked their FAP benefits at the store by purchasing food and non-food items such as gasoline, cigarettes, etc, on credit. The evidence also showed that the store did not have sufficient eligible food items to support high dollar transactions. The evidence showed that Respondent’s Electronic Benefit Transfer (EBT) card was used for numerous transactions at the store during the fraud period.

Respondent’s signature on the Assistance Application in this record certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. The Department has established that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices. Respondent’s intent can be inferred through circumstantial evidence. Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting responsibilities.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a total \$ [REDACTED] overissuance. This is Respondent’s first FAP IPV. Consequently, the Department’s request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did commit an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the 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.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 3, 2014

Date Mailed: April 3, 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.

CAP/las

cc:

