

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

IN THE MATTER OF:



Reg. No.: 2014-26770
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 30, 2014
County: Wayne County DHS 49

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 30, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

☒ Participants on behalf of Respondent included: The Respondent and two witnesses Janiya Thompson and Cyrial Passmore.

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 12, 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 that 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 December 1, 2011 through June 30, 2012.
7. The Department alleges that Respondent trafficked [REDACTED] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits.
8. This was Respondent's ☒ first ☐ second ☐ third alleged IPV. The Department alleged that this was Respondent's second IPV but did not provide evidence that a prior IPV had occurred.
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. 10.

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. 6; 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 [REDACTED] of FAP benefits at [REDACTED]. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2013), p 65. Trafficking also includes (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (November 2012), p 3.

The Department presented evidence that 6 Mile 2 was found in administrative hearings before the United States Department of Agriculture (USDA) to have trafficked FAP benefits and had their authorization to accept FAP benefits revoked. To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when she used her FAP benefits at 6 Mile 2.

The Department presented evidence of Respondent's FAP transaction history at [REDACTED] showing [REDACTED] spent in FAP transactions in amounts up to \$ [REDACTED] in one transaction on June 25, 2012. The trafficking period covers and begins in December 2011 with an even purchase of [REDACTED] made on December 6, 2011. One of the indicia of trafficking is the purchase in high even dollar amounts or amounts ending in \$.99, or .00, see transaction June 15, 2012. The Claimant also spent [REDACTED] in one transaction on June 22, 2012. Reviewing other high dollar purchases based on the FAP purchases history most were made by the Respondent at [REDACTED] or super markets. The [REDACTED] operation would have made it difficult to buy high dollar amount items because of the glass turnstile, limited supply of fresh foods and limited space to ring up foods. [REDACTED] was a gas station convenience store.

The Department contended that Respondent's transactions were trafficked because [REDACTED] did not have the inventory or infrastructure to support the high dollar transactions, as the normal amount for a transaction at this type of store is around [REDACTED]. Specifically, the Department argued that [REDACTED] is a gas station/convenience stores selling mostly snack food items with a limited stock of other eligible food items, limited counter space, and no shopping carts or baskets. In addition, the Department stated that the cash register area is enclosed with bullet proof glass

making it impractical to purchase large amounts of food or to support the high volume of transactions that were occurring in short amounts of time.

Several of Respondent's other transactions ended in numbers such as .00, and .99, which the Department stated are figures consistent with trafficking. At the hearing, the Claimant presented evidence that the high dollar amounts were very suspicious as it was common for her to send her children to the store and claimed that the [REDACTED] took advantage of her children. However, it was not considered a compelling argument or an excuse for the high dollar amounts. Additionally, the Claimant sent her [REDACTED] brother with the children who should have been aware of what the children were buying. One of the children testified that she did not buy [REDACTED] worth of candy at any time. The child did buy candy and chips in larger dollar amounts but it was unclear when these purchases were made. One of the children said she was charged for more than what she purchased by the store but did not complain to the storeowner. Overall, this testimony was not compelling or credible to explain the large dollar amounts. The Claimant allowed her children to use her EBT card without officially adding them to the card. The Claimant felt that because the store allowed the children to buy large quantities of chips, pop and candy she should not be charged with trafficking. The Claimant presented no proof that that is what occurred at [REDACTED] but at other stores, within days prior to the hearing. Again, this evidence does not support an argument that this conduct also occurred at [REDACTED]

The foregoing evidence, coupled with the USDA's finding that [REDACTED] trafficked FAP benefits, was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked FAP benefits at [REDACTED]

Disqualification

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

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 (May 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 by trafficking FAP benefits. The Department alleged in its hearing summary that this was the Respondent's second intentional program violation but did not present any records from Department records that a prior IPV had occurred, thus the Department did not meet its burden to establish a second IPV. Therefore, this

disqualification shall be considered as Respondent's first IPV, and thus she is subject to a one-year disqualification under the FAP program. BEM 720, pp 13, 14.

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 a trafficking-related IPV is the value of the trafficked benefits as determined by a court decision, the individual's admission, or 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, which can be established through circumstantial evidence. BAM 720, p 7.

The Benefit Summary Inquiry provided by the Department establishes that Respondent was issued FAP benefits by the State of Michigan during the fraud period and the FAP transaction history the Department presented showed Respondent had [REDACTED] in countable FAP transactions at [REDACTED]. This evidence established that Respondent trafficked [REDACTED] of her FAP benefits at [REDACTED] between December 2011 and June 30, 2012, and the Department is entitled to recoup that amount.

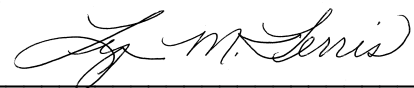
DECISION AND ORDER

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. Respondent ☒ did ☐ did not commit an IPV by clear and convincing evidence.
2. Respondent ☒ did ☐ did not receive an OI of program benefits in the amount of [REDACTED] from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

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.



Lynn M Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 14, 2014
Date Mailed: May 15, 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.

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