

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-27047  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: April 1, 2014  
County: Monroe

**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 20, 2014, 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. The Respondent  was not aware of the responsibility to not engage in unauthorized transactions.
5. It is unknown if the Respondent had any 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 June 2011 through November 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) [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 his FAP benefits because he “trafficked \$ [REDACTED] between June 2011 through November 2012.

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 "...repetitive patterns of unusual, irregular and inexplicable activity for your type of firm." Having determined that ██████████ was engaged in trafficking violations they were permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP);
- ██████████ had a limited counter space, a lack of shopping carts and baskets and a neighboring "...█████████";
- The owner of ██████████ was permanently disqualified from the SNAP program on December 27, 2012;
- over a period of time, Respondent purchased items at *Julie's Party Store* using his FAP benefits; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented no evidence from the USDA with the exception of a notice letter that the *Julie's Party Store* engaged in FAP trafficking.

Second, the Department argued that the *Julie's Party Store* was "basically a convenience store" with limited supply of SNAP stocking, but having "...an adequate selection of eligible foods in all four categories but not selling any fresh meats,, fresh produce, frozen foods or baby foods." Also, the Department presented a series poor quality pictures in an attempt to demonstrate some form of non-compliance.

Third, the Department showed the ██████████ transactions between ██████████ ██████████ involving other unknown households making [card swipe] purchases at ██████████ Most of those transactions were over \$ ██████████ –

whether any of those suspect transactions reflected the Respondent's actions was unknown.

- Based on the above information, the Department witness testified that it was unlikely that someone would make legitimate purchases of food at [REDACTED] for more than \$ [REDACTED] even though there was no evidence presented that [REDACTED] Party Store engaged in Electronic Benefit Transfer (EBT) transactions of FAP benefits with undercover officers on or about December 27, 2012.

Based on the foregoing information and the evidence, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits. It is reasonable to conclude that Respondent could purchase items at [REDACTED] because it was very close to his home. Two back to back transactions – without more evidence - are not suspicious by themselves, but is perhaps more suggestive of forgetfulness – which begs the question of the mental status of the Respondent.

Finally, even though [REDACTED] had no grocery carts or baskets – they had “...adequate selection of eligible foods in all four categories...” according to the Department's own evidence.

Inefficient shopping is not evidence of trafficking by the Respondent.

The pictures presented by the Department demonstrate nothing – owing to poor print quality.

The conclusion attributed to SNAP officials in this case that transaction over \$ [REDACTED] were suspicious was not attributed to any particular witness nor was it explained why other investigations showed different amounts of dollar-level suspicion. Statements about credit accounts were also attributed to “customers and Respondents...” who were permitted credit lines and cash. None of these “witnesses” were identified and no statements or testimony was offered in support of the Department's proofs.

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 his responsibilities and that fraudulent participation in FAP could result in criminal or civil or administrative claims - such as a signed DHS 1171 application.

The testimony did not address what was found or purchased during the course of the investigation that was the basis for the Department's testimony that Respondent knowingly trafficked FAP benefits – 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.<sup>1</sup>

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 evidence<sup>2</sup> that Respondent trafficked his FAP benefits at the *Julie's Party Store*.

### **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 (7-1-2013), 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 proof to show with clear and convincing proof 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 noted in the summary but owing to the failure of proof the OI could not be established as a trustworthy number supported with clear and convincing evidence.

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<sup>1</sup>See *In Re Martin*, 450 Mich 204 at page 227 (1995) "We agree that the clear and convincing evidence standard, the most demanding standard applied in civil cases..."

<sup>2</sup>The Department's Exhibit was also troublesome for lack of evidence supporting the testimony of the OIG and for the lack of a relevant index directing the reviewer to the appropriate passages. Then, it was further marred by poor photographic quality of the prints – upon which the Department placed great reliance..

**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.



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

Date Signed: 4/18/14

Date Mailed: 4/21/14

**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]