

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

IN THE MATTER OF:

██████████
████████████████████
████████████████████

Reg. No.: 2014-30054
Issue No(s): 3005
Case No.: ██████████
Hearing Date: August 20, 2014
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 August 20, 2014 from Detroit, Michigan. The Department was represented by ██████████
████████████████████ 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 overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits?

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 March 7, 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 issued by the Department.
4. Respondent was aware of the responsibility to use FAP benefits for lawful purchases.
5. Respondent did not have an 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 May 22, 2013.
7. During the alleged fraud period, the Department alleges that Respondent trafficked \$34.89 in FAP benefits issued by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$34.89.
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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; 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 (May 2014), pp. 12-13.

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 (May 2014), p. 7; 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 because she trafficked FAP benefits. 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 2014), p. 66. 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 (July 2014), p. 3.

The Department contends that Respondent trafficked FAP benefits because she fraudulently used the electronic benefit transfer (EBT) card containing the FAP benefits of an individual, [REDACTED] on May 22, 2013. The Department testified that Respondent was not a member of TG's FAP group and was not TG's authorized representative. In support of its trafficking allegation against Respondent, the Department presented (i) an email from the [REDACTED] theft prevention officer who had stopped Respondent for shoplifting; (ii) copies of Respondent's driver's license and TG's EBT card; (iii) Respondent's May 22, 2013 signed admission concerning her shoplifting; and (iv) an EPPIC recipient transaction history and EBT history showing that TG's card had been used for a \$34.89 transaction at the [REDACTED] on May 22, 2013, at 2:36 p.m.

The Department contends that Respondent fraudulently used TG's FAP EBT card to make a \$34.98 purchase [REDACTED] on May 22, 2014, relying on the fact that TG's EBT card was confiscated from Respondent on May 22, 2013, and she admitted that she had used the card prior to being stopped by the store theft prevention officer for an unrelated shoplifting incident. While the evidence established that Respondent admitted in a signed and sworn statement to the shoplifting incident, the only evidence concerning Respondent's admission to using TG's EBT card is the unsigned email from the [REDACTED] theft prevention officer that, when he stopped Respondent on suspicion of shoplifting, he confiscated TG's FAP EBT card from her and she admitted to him that she had used the card to make a \$40 purchase at [REDACTED] that day and multiple times on prior occasions. This officer's email has limited value in light of the fact that it is hearsay and the officer did not testify at the hearing. See MRE 805; MRE 803(6); MRE 804(a)(5) and (b)(3).

While the evidence established that TG's FAP EBT card was used at the [REDACTED] at issue, there was no evidence that TG reported her card stolen or that TG did not permit Respondent to use her card. In order to establish an IPV, the Department must show that Respondent committed, and *intended to commit*, an IPV. 7 CFR 273.16(e)(6); 7 CFR 273.16(c). While Respondent was not a member of TG's FAP group or an authorized representative permitted to use TG's card, in the absence of any evidence that TG did not allow Respondent to use her card, the Department has failed to establish that Respondent intended to commit an IPV.

Therefore, the Department has failed to establish by clear and convincing evidence that Respondent fraudulently used TG's FAP EBT card. As such, the Department has failed to establish that Respondent committed an IPV by trafficking FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an 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 (July 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.

Because the Department has failed to establish that Respondent committed an FAP IPV, Respondent is not subject to a disqualification from the FAP program.

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 (i) a court decision, (ii) the individual's admission, or (iii) 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. 8.


As discussed above, the Department failed failed to establish by clear and convincing evidence that Respondent trafficked FAP benefits. Therefore, the Department is not entitled to recoup and/or collect from Respondent the \$34.89 it alleges were trafficked FAP benefits.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of FAP benefits in the amount of \$34.89.

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


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 10, 2014

Date Mailed: September 10, 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.

ACE/tlf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]