

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

IN THE MATTER OF:

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

Reg. No.: 2014 28323
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 9, 2014
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 June 9, 2014 from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

ISSUES

1. Did Respondent receive an overissuance (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 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 8, 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 for 12 months.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware 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 did not have 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 from June 1, 2012 through December 31, 2012.
7. During the fraud period, Respondent was issued \$1,400.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$549.99 in such benefits during this time period.
8. The Department alleges that Respondent trafficked \$850.01 in FAP benefits and that Respondent received an OI in FAP benefits in the amount of \$850.01.
9. This was Respondent's first alleged IPV.

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 (December 2011), p. 17.

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 (December 2011), 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 his FAP benefits because he completed several transactions on the same day within minutes of each other. 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) (April 2012), p 45. 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 (October 2011), pp. 2-3.

In support of this claim, the Department submitted a transaction history relating to purchases at two convenience stores between June 14, 2012 and December 10, 2012. The two stores were owned by the same individual and located within a few minutes of each other. Specifically, the transaction history showed that on June 14, 2012, one transaction was completed at one convenience store in the amount of \$75.00 and seven minutes later, another transaction was completed at the other store in the amount of \$74.99. Similarly, July 10, 2012, two separate transactions were completed within one minute in the amounts of \$68.97, and \$41.03 at one of the convenience stores. Also, on the same day, just three minutes later another transaction was completed in the amount of \$89.99 at the other convenience store. The transaction history further revealed large transactions and/or multiple transactions within minutes at the convenience stores.

The Department testified that it observed both convenience stores and it would have been logistically impossible to handle this amount of inventory in such short periods of time. Further, the Department presented evidence to show that both convenience stores were investigated on allegations of trafficking and while the investigation was pending the average amount of purchases sharply declined at the convenience stores.

In response, Respondent stated that he was not the person completing the purchases and that there were periods of time in which he did not have an EBT card. However, Respondent was unable to recall the approximate dates of when he lost his EBT card; when he requested a replacement card; or when and where he made purchases using the EBT card. The Department acknowledged that Respondent requested a replacement card on June 5, 2012.

While it is understandable that Respondent would not recall every transaction at every store made in 2012, Respondent should have been able to provide approximate dates of when he misplaced his card, requested another card and/or received a replacement card. To accept the Respondent's explanation of the purchase history during the alleged fraud period, one would have to believe that all of the following were true:

- Respondent reported his EBT card missing on or about June 5, 2012;
- Respondent did not receive the card for approximately one year

- Respondent did not inquire about the replacement card;
- Respondent did not use his FAP benefits for approximately one year after requesting a replacement card; and
- The person receiving the card somehow had access to Respondent's personal pin number.

Respondent was able to recall shopping at the stores in question as well as most of the stores listed in the transaction history. Given that Respondent (i) requested a replacement card during the period immediately preceding the alleged trafficking, (ii) admitted to making purchases at the stores listed in the transaction history; and (iii) that his private pin number was used to complete the transaction, Respondent's testimony that he did not complete the transactions at the subject convenience stores is found not credible.

The foregoing evidence was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at the local convenience store.

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. 12.

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, (October 2009) 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. 13.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV by trafficking FAP benefits. Because this was Respondent's first IPV, he is subject to a one-year disqualification under the FAP program. BEM 720, p 13.

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. In this case, benefit summary history provided by the Department establishes that Respondent was issued FAP benefits by the State of Michigan from June 1, 2012 through December 31, 2012 in the amount of \$1,400.00. However, the Department indicated that it was only seeking to recoup benefits used in unlawful purchases at the convenience store in question during the fraud period which totaled \$850.01. The FAP transaction history the Department presented showed Respondent completed multiple transactions on the same day in a short period of time. This evidence established that Respondent

trafficked \$850.01 of his FAP benefits at a local convenience stores between June 1, 2012 through December 31, 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. The Department has established by clear and convincing evidence that Respondent did commit an IPV from June 1, 2012 through December 31, 2012.
2. Respondent did receive an OI of program benefits in the amount of \$850.01 from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$850.01 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 30, 2014

Date Mailed: June 30, 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.

JAM/cl

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