

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

**IN THE MATTER OF:**

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

Reg. No.: 2014-31872  
Issue No(s): 3005  
Case No.: ██████████  
Hearing Date: June 30, 2014  
County: Wayne (15)

**ADMINISTRATIVE LAW JUDGE:** Eric Feldman

**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 30, 2014, from Detroit, Michigan. The Department was represented by ██████████, 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 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for  
 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 March 18, 2014, 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 of the responsibility 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 May 1, 2011 to September 30, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$485.85 in  FIP  FAP  SDA  CDC  MA benefits.
8. This was Respondent's  first  second  third alleged IPV.
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 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 of his FAP benefits because he trafficked \$485.85.

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.

Additionally, FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

BEM 203 (January 2009 and October 2011), p. 2.

The Department argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as “Store”), where Respondent is responsible for five unauthorized transactions at the Store(s) (two different locations but same Store chain) from May 2011 to September 2012;
- Respondent allowed a non-household member to use his Electronic Benefit Transfer (EBT) card to purchase items that would be resold at a retail location;
- The items were paid for by the use of multiple EBT cards for each transaction;
- Based on the above information, Respondent trafficked his FAP benefits.

During the hearing, the Department testified that it obtained documentation from the Store’s asset protection team alleging possible EBT scams. See Exhibit 1, pp. 2 and

10-32. The Department testified that Respondent exchanged his EBT card for the buying or selling of FAP benefits for cash or consideration other than eligible food. See BAM 700, p. 2.

Specifically, on August 21, 2012, the OIG report indicated that the Respondent allowed a non-household member to use his EBT card to purchase food items that were not being used in the Respondent's residence. See Exhibit 1, p. 2. On August 21, 2012, the Department presented the Store's transaction receipt in which Respondent's card was used in conjunction with three other EBT cards to pay down the balance at the Store. See Exhibit 1, p. 2 and 19-20. A review of the receipt showed a bulk purchase of the same energy drink totaling \$360.50. See Exhibit 1, p. 19. Furthermore, the receipt indicated four EBT cards were used to pay part of the balance. See Exhibit 1, p. 20. Respondent's alleged fraud amount for this purchase was \$17.44. See Exhibit 1, p. 20. The Department presented Respondent's EBT purchase history, which did confirm he spent \$17.44 at the Store (same date and time). See Exhibit 1, p. 45.

Moreover, the Department testified that in order to purchase the items at the Store, Respondent had to be a member (visitor passes in limited circumstances). However, the Department testified that Respondent did not have any membership at the Store.

Additionally, the Department presented four additional transactions at the Store(s) in which the Department alleged trafficking. On May 21, 2011, Respondent conducted two transactions within 30 minutes at the Store in the amounts of \$68.66 and \$60. See Exhibit 1, p. 43. Also, on August 25, 2012, Respondent conducted a transaction at the Store in the amount of \$157.19 and \$200 at the Store (different location-same chain) on September 13, 2012. See Exhibit 1, p. 46. The OIG report indicated the other purchases were trafficking for the following reasons: (i) they were back to back purchases within minutes of each other; (ii) even dollar purchases; (iii) high dollar purchases; and (iv) spending his entire FAP balance all at once, leaving him with zero FAP benefits for the remainder of the month. See Exhibit 1, p. 3.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving his FAP benefits.

First, the Department only established that the \$17.44 transaction at the Store amounted to trafficking. See Exhibit 1, pp. 19-20. As to Respondent's four additional alleged trafficking amounts, the Department did not establish by clear and convincing evidence that Respondent trafficked his FAP benefits. The Department failed to present evidence (i.e., the Store receipts), to show that the remaining four purchases amounted to trafficking.

Nevertheless, the Department established that the one transaction is persuasive to conclude that the Respondent trafficked his benefits. As stated previously, the evidence presented that Respondent was not a member at the Store and allowed a non-household member to use his EBT card in conjunction with three other EBT cards to purchase bulk items (energy drinks) on August 21, 2012. See Exhibit 1, pp. 19-20. It is

highly suspicious that Respondent used his EBT card with three other EBT individuals to purchase \$360.50 in energy drinks on August 21, 2012. Instead, it is reasonable to conclude that Respondent is involved in trafficking by selling his benefits for cash or consideration other than eligible food to an individual and/or retail store in order for the bulk item purchase to occur on August 21, 2012. See BAM 700, p. 2 and BEM 203, p. 2. The evidence is persuasive that Respondent allowed a non-household member to use his EBT card to purchase items that would be resold at a retail location. As such, the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits at the Store and therefore, an IPV is present in this case.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

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. 16. 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified from FAP benefits for 12 months. BAM 720, p. 16.

### **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.

For FAP trafficking, the OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- The court decision.
- The individual's admission.
- 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. This can be established through circumstantial evidence.

BAM 720, p. 8.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving his FAP benefits. The Department was able to prove that Respondent was involved in FAP trafficking. The Department has satisfied its burden of showing that Respondent did receive an OI of program benefits. Thus, it is found that Respondent received an OI of program benefits in the amount of \$17.44 from the FAP program for the time period of August 1, 2012, to August 31, 2012. See BAM 720, p. 8.

**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  has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent  did  did not receive an OI of program benefits in the amount of \$17.44 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

reduce the OI to \$17.44 for the period August 1, 2012, to August 31, 2012, and initiate recoupment procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from  
 FIP  FAP  SDA  
 12 months.  24 months.  lifetime



**Eric Feldman**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: July 15, 2014

Date Mailed: July 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.

EJF/cl

cc:

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