

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-34840
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: September 4, 2014
County: Wayne (35)

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 September 4, 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: Respondent, [REDACTED].

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 April 15, 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 April 1, 2010 to September 30, 2012 (fraud period).
7. The Department alleges that Respondent trafficked \$1,992 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.

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. Moreover, 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), p. 2.

Also, food assistance benefits can be used to buy eligible food at any Food and Nutrition Service (FNS) authorized retail food store or approved meal provider. BEM 100 (October 2009), p. 2. Eligible food includes any food or food product intended for human consumption except alcoholic beverages, tobacco, and foods prepared for immediate consumption. BEM 100, p. 2.

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

- there exists a store (hereinafter referred to as "Store"), where the United States Department of Agriculture ("USDA") conducted an investigation at the Store regarding food trafficking and ultimately led to the Store's permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store's limited supply of food and physical space made it unlikely that someone would make regular and/or large purchases of food;

- over a period of time, Respondent's transactions of amounts greater than \$50 and purchases between \$15 to \$30 for hot foods at the Store was consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department testified that it amended the trafficking amount from \$4,029 to \$1,992 for the same alleged fraud period of April 1, 2010 to September 30, 2012.

Second, the OIG report indicated that a trafficking investigation was conducted at the Store. See Exhibit 1, p. 3. Moreover, the trafficking investigation and Store customer interviews determined that the Store purchased food stamps cards for 50 cents on the dollar, allowed customers to use food stamps cards to pay down store credit, and allowed customers to purchase "hot food" (Kabob, pizza, chicken wings). See Exhibit 1, p. 3. The OIG report indicated that the Store is a small grocery store that has limited eligible food stock to support high dollar transactions. See Exhibit 1, p. 3. Furthermore, the OIG report indicated the Store does not utilize an optical scanner, have basket/buggies for goods, no grocery bags or boxes for patrons to carry out eligible food items, and photographs taken to show pizza dough balls/daily pizza orders prepared. See Exhibit 1, p. 3. The Department infers that the Store did not have the food items or the physical means to support high dollar transactions.

Third, the Department presented the case investigation summary report. See Exhibit 1, p. 10-11. The Department also presented evidence from the USDA that the Store was permanently disqualified from SNAP on January 7, 2013. See Exhibit 1, pp. 12-13.

Fourth, the Department presented a written statement from the Store owner/employer, photos taken from surveillance video during the search warrant raid, photo lot/photo taken during the search warrant raid, store credit ledgers (Arabic to English), and monthly EBT transactions compared to surrounding businesses within a half mile radius. See Exhibit 1, pp. 14-56. It should be noted that Respondent's name was not located on the store credit ledger.

Fifth, to establish that Respondent trafficked his FAP benefits at the Store, the Department relied on Respondent's FAP transaction history. See Exhibit 1, pp. 57-63. The Department testified that it considered amounts at or above \$50 during the time period at the Store to be trafficking because the Store did not have the food items or the physical means to support high dollar transactions. Also, the Department testified that it considered amounts from \$15 to \$30 to be trafficking because these food purchases are not eligible by FNS (i.e., "hot foods"). BEM 100, p. 2.

Sixth, the Department presented Respondent's IG-311 report, which showed his FAP transaction history at other stores. See Exhibit 1, pp. 64-141. The Department argued this report shows Respondent had access to other stores in the surrounding area.

At the hearing, Respondent testified that he did not traffic his FAP benefits. Respondent testified that the photos provided by the Department as evidence did not

accurately represent the food items available at the time he conducted his transactions. Respondent testified that the Store was fully stocked and that he kept purchasing food items at the Store due to the lower prices compared to other establishments. Moreover, Respondent testified that he never purchased “hot food” items at the Store because he did not trust the meals prepared by the Store. Respondent testified that he would purchase canned foods, breads, fruits, spices, etc... In response, the Department testified that at the time the investigative photos were taken, Respondent conducted transactions at the Store.

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

First, it is reasonable to conclude that Respondent could purchase items at the Store using his Electronic Benefits Transfer (EBT) card. The pictures presented by the Department do indicate somewhat that a person would have difficulty making large transactions because of the limited food supply/physical space. However, the pictures also showed food products that are intended for consumption. See Exhibit 1, pp. 19-46.

Second, the Department’s main argument was based on Respondent’s FAP transaction history. The Department testified that it considered amounts at or above \$50 during the time period at the Store to be trafficking because the Store did not have the food items or the physical means to support high dollar transactions. Also, the Department testified that it considered amounts from \$15 to \$30 to be trafficking because these food purchases are not eligible by FNS (i.e., “hot foods”). BEM 100, p. 2. However, Respondent credibly testified that he did not commit an IPV involving his FAP benefits. Respondent credibly testified that he did not purchase food items not authorized by FNS (i.e., hot foods) and that he purchased legitimate food items for consumption such as canned food, breads etc... Respondent provided credible testimony that rebutted the Department’s assertion that he trafficked his FAP benefits.

In summary, the Department failed to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at the Store. Respondent provided credible testimony that he could reasonably purchase food items for consumption at the Store, which did not result in FAP trafficking. Thus, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits.

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 failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under 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.

For FAP trafficking, the OI amount for trafficking-related IPV's 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

In this case, the Department's OIG indicates that the time period it is considering the fraud period is April 1, 2010 to September 30, 2012. The Department also alleges that Respondent trafficked \$1,992. However, as stated in the analysis above, the Department has failed to establish that Respondent committed an IPV involving his FAP benefits. The Department was unable to prove that Respondent was involved in FAP trafficking. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of \$1,992 in FAP benefits and an overissuance is not present in this case.

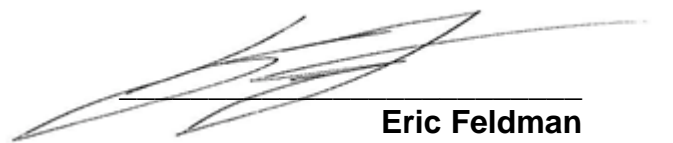
DECISION AND ORDER

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 \$1,992 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.



Eric Feldman
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.

EJF/cl

cc:

