

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

IN THE MATTER OF:

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Reg. No.: 2014 3506
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 27, 2014
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 January 27, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG), who was located in the Flint District Office.

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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 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 October 7, 2013, 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 to not traffic food assistance benefits and obtain items or cash not otherwise available for purchase through an EBT card. .
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 November 2011 through June 2012 (fraud period). Exhibit 1, pp.2
7. During the fraud period, Respondent was issued \$5678 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period as benefits were trafficked. The Department did eliminate those transactions during the alleged fraud period that were low in dollar amount. Exhibit 1 pp, 70-76.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$5678.
9. This was Respondent's first second third alleged IPV.
10. 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 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 \$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 (7/1/13), p. 10.

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 (7/1/13), 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 presented evidence that the Respondent frequented the store known as [REDACTED] which was ultimately disqualified by the USDA for trafficking in food assistance benefits. The [REDACTED] had its supplemental nutrition assistance program authorization revoked and was disqualified as an authorized dealer. Federal criminal charges against the store owner are being pursued by the USDA. Exhibit 1, pp. 1. The store was essentially a convenience store with a gas station operation selling chips, pop, candy and basic food essentials, with expired dates. There were no shopping carts or baskets and one point of sale device. The cash registers were enclosed with bullet proof glass and therefore made it impractical to purchase large amounts of food merchandise or to conduct sizeable large dollar amount transactions in a short time period.

The Department also presented as evidence the Respondent's EBT usage history at the [REDACTED] for the fraud period and established an over issuance of \$2956.02. Exhibit 1 pp. 74. The Department also presented evidence of EBT usage at [REDACTED] for the period of the fraud and over issuance in the amount of \$2722.28. The Respondent frequented the store in November 2011 through June 2012 and during those times based upon Respondent's transaction history spent high dollar amount purchases at the store, many transactions occurring at the same time or a minute later. By way of example, on 8/19/12 the Respondent made 5 EBT purchases within 4 minutes in the following amounts: \$26.01, \$49.99, \$44.99, \$55.01, and \$73.99. Exhibit 1 pp. 74-75.

Given the limited food stocks at the store and the fact that it was primarily a convenience store and gas station, these transactions are evidence of trafficking, as purchase of foodstuffs in large dollar amounts, given [REDACTED] [REDACTED] s inventory, would have been almost impossible and all of the transactions were only minutes apart. Based on the record as a whole, and the evidence of traffic trafficking occurring at 6 [REDACTED] as well as the unusually large dollar amounts of the purchases and the back-to-back large dollar amount purchases, it is determined that the Department has met its burden of proof and has shown that trafficking occurred.

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. 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 (1/1/13), 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 established that an intentional program violation has been established as it is determined that the Respondent trafficked her food assistance benefits at both the [REDACTED]. Therefore, this being the Respondent's first intentional program violation, it is determined that the Department's request for a one year disqualification is established.

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, based on the finding that the Respondent trafficked her food assistance benefits, the Department has clearly established the over issuance amount of \$5678.00 because she trafficked her food assistance and is not entitled to receive any benefits for the amounts in question. Therefore, the Department has met its burden of proof and has established an over issuance.

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. Respondent did did not commit an IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$5678.00 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$5678.00 in accordance with Department policy.

- It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 19, 2014

Date Mailed: February 19, 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.

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]