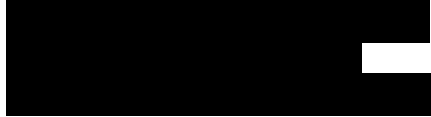


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2014-5787
Issue No(s):
Case No.: 3005
Hearing Date: December 10, 2013
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 December 10, 2013 from Lansing, Michigan. The Department was represented by , Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent [who appeared 35 minutes late] included: Barbara Jones.

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 17, 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 in benefits via her 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 May 1, 2011 through April 30, 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan...
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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED] **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 (July 2013), p. 12.

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 (July 2013), 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; 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 her FAP benefits because she “trafficked \$ [REDACTED] between May 1, 2011 through April 30, 2012.

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.

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

- there exists a food store (hereinafter referred to as [REDACTED]), where the United States Department of Agriculture (USDA) determined that [REDACTED] was engaged in food and contraband trafficking and ultimately led to its

permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);

- [REDACTED] had a limited supply of non-expired food and it was unlikely that someone would make regular and/or large purchases of food owing to the lack of shopping carts or baskets for shoppers;
- [REDACTED] engaged in Electronic Benefit Transfer (EBT) transactions of FAP benefits with undercover officers whereby the officers received cash, credit, cigarettes and alcohol in exchange for EBT/FAP benefits;
- The owner of [REDACTED] has entered a plea of guilty in Federal Court and awaits sentencing; he has indicated that any transactions over \$ [REDACTED] are “likely” trafficking;
- over a period of time, Respondent regularly purchased food at Shiva Market using her FAP benefits; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented no evidence from the USDA that the Shiva Market engaged in FAP trafficking resulting in permanent disqualification – however the OIG agent did submit transaction/redemption history showing high dollar redemptions of EBT benefits. See Department’s Exhibit A, pp. 8, 9.

Second, the Department argued that the [REDACTED] had a limited supply of non-expired food and it was a location where it is unlikely that someone would make large purchases of food owing to a lack of grocery carts, baskets and SNAP approved food products. Additionally, the Department testified that there were no optical scanners,

Also, the Department presented pictures in an attempt to demonstrate the non-complying food products and expired food products. The pictures presented by the Department do indicate [somewhat] that a person would have difficulty making large transactions of non-expired food.

Third, the Department showed the [REDACTED] transactions between November 23, 2011 and April 28, 2012 involving the Respondent - many of which were over \$ [REDACTED]. See Department’s Exhibit A, pp. 8, 9. The [REDACTED] “...average transaction is reported in the summary as approximately \$ [REDACTED] to \$ [REDACTED] and that anything over \$ [REDACTED] is likely trafficking.” The Department also showed the [REDACTED] average transactions were approximately 3 times greater than transactions at comparable establishments. See Department’s Exhibit A, at pp. 44 – 47.

Based on the above information, the Department witness testified it is unlikely that someone would make purchases of food in the Shiva Market for more than \$30.

Finally, to establish that Respondent trafficked her FAP benefits at the [REDACTED], the Department relied on Respondent's FAP transaction history, which showed an OI of \$ [REDACTED] for the time period of May 1, 2011 through April 30, 2012.

The Department contends that FAP trafficking often involves patterns of purchases based on statistical improbabilities – such as close purchases, even dollar transactions, etc. The OIG agent today also verified with photographic evidence the expired food which stocked the shelves of the [REDACTED]. However, when the Respondent testified she said that she used to live around the corner from the [REDACTED] since 1999 having recently moved away and had an infant who consumed formula – much of which she purchased there – *expired* or not. She added that the cost per can was over \$ [REDACTED]. She frequented the [REDACTED] because she knew the owner and they served pizza - which her [REDACTED]. She acknowledged on cross examination that she could and would get better deals at larger super markets – but during the time period in issue – she had no transportation and had to depend on the kindness of others for a lift to the bigger markets where she could use her EBT benefits more efficiently. She said she got an [REDACTED] about a year ago as well. The Respondent's witness had no testimony.

The Department's theory of the case failed after the credible testimony from the Respondent because the "likelihood" of a transaction being a trafficking event because it was over \$ [REDACTED] was easily defeated by the Respondent's admission that she bought \$ [REDACTED] cans of [REDACTED] – *expired* or not. Two cans of [REDACTED] would greatly exceed the \$ [REDACTED] "likelihood" established by the former Vendor of [REDACTED]. As for the expired food items – while probably not wise to purchase - there was no evidence that she or her purchasing [REDACTED] was aware packaging dates.

A review of her transactions at [REDACTED] could also be considered reasonable and convenient for a walking EBT client who wouldn't need a cart or basket to carry a can or two of formula.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. It is reasonable to conclude that Respondent could purchase items at the [REDACTED] using her EBT card. Even though the [REDACTED] had no grocery carts or baskets – even her [REDACTED] could carry a can or two of [REDACTED] home to her [REDACTED] to be fed to her [REDACTED]. Old stock purchase while perhaps unwise, was not evidence of trafficking on the part of the Respondent.

The pictures presented by the Department do indicate expired food products and identifies store employees and the various "stings" – this might be evidence for the criminal matter, but there was a failure of proof to establish trafficking in this Respondent – based on the this record.

Finally the Vendor's statement that purchases of \$ [REDACTED] involved trafficking – was qualified as "likely" and was self-serving to the Vendor for his criminal case – it carried no weight today following the Respondent's admission of formula purchases.

In summary, 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. The Department failed to establish by clear and convincing evidence that Respondent trafficked her FAP benefits at the Shiva Market. A review of the evidence presented frank scenarios where Respondent could reasonably purchase high dollar formula for consumption and not engage in FAP trafficking. Thus, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits.

It should also be noted that the Department alleged that multiple “recipients” said that they have trafficked FAP benefits at the Shiva Market. However, this was not a statement from the Respondent

Disqualification

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

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.

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 was noted in the summary but neither recoupment nor collection was requested.

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 \$ [REDACTED] from the following program(s) FIP FAP SDA CDC MA.

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

/s/
Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/10/14

Date Mailed: 1/10/14

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.

DM/tb

cc:

