

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

IN THE MATTER OF:

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

Reg. No.: 2014 5834
Issue No.: 3005
Case No.: ██████████
Hearing Date: February 19, 2014
County: Wayne County (76)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on February 19, 2014, from Detroit, Michigan. The Department was represented by ██████████, Office of Inspector General Regulation Agent, (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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) Food Assistance Program (FAP)
 State Disability Assistance (SDA) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP) Food Assistance Program (FAP)
 State Disability Assistance (SDA) 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 during the relevant periods at issue.
4. Respondent was was not 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 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 they are considering the fraud period is June 1, 2008 through January 31, 2011.
7. During the alleged fraud period, the OIG alleges that Respondent trafficked \$799 in FIP FAP SDA CDC MA benefits.
8. Respondent did did not receive an OI in the amount of \$799 under the FIP FAP SDA CDC MA program.
9. The Department has has not established that Respondent committed an IPV.
10. This was Respondent's first second third alleged IPV.
11. 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), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence

Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor,
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee. [BEM 720 (August 1, 2012), p 10.]

Intentional Program Violation

Suspected IPV means an overissuance (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 their reporting responsibilities. [BAM 720, p 1 (emphasis in original).]

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1. Trafficking is the buying or selling of FAP benefits for cash or consideration other than eligible food. Department of Human Services, Bridges Policy Glossary (BPG) (April 1, 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 1, 2011), p 2.

The Department must establish an IPV by clear and convincing evidence. BAM 720, p 1. 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 trafficked his FAP benefits at Tri County Fuel, located at 1 East State Fair, Detroit, MI 48203. ("Tri-County"). The evidence presented by the Department established that the United States Department of Agriculture (USDA) determined in an administrative proceeding that Tri County was an establishment that had engaged in trafficking and had was permanently disqualified

from accepting FAP benefits. Exhibit 1, pp 38-62. While this evidence establishes that Tri County was an establishment that trafficked FAP benefits, to support a trafficking case against Respondent the Department must establish, by clear and convincing evidence, that Respondent engaged in trafficking when he used his FAP benefits at Tri County.

In this case the Department evidence demonstrated that all purchases over \$30 were indicated to be trafficking and therefore any purchases under \$30 were eliminated except in situations where several transactions were made immediately after each other to total larger amounts. The average transaction at Tri County was around \$21.22. The transactions in question made by the Respondent on his bridge card were transactions of varying amounts summarized in Item 3 of the evidence pp. 30 through 35. The last several transactions, usually around the 8th or 9th of the month, were suspicious in that multiple transactions occurred in a short period of time. As an example, the Department referenced 3 transactions within 1 hour of \$74.22, 14.57 and 6.75 on December 8, 2010. On January 9, 2011 there were 2 purchases, 10 minutes apart, in the amounts of \$58.42 and \$18.94.

To establish that Respondent engaged in trafficking at Tri County, the Department relied on Respondent's FAP transaction history at the store, which included 3 transactions as set out in the preceding paragraph and established by the evidence presented that the establishment had no grocery carts or baskets, no optical scanner for scanning purchases, and a limited stock of eligible foods and many expired food items. This history shows a number of unusual transactions: The Department also pointed out that the cash register was located behind a plexiglass window with very limited counter space for checking out items.

The foregoing evidence, coupled with the USDA's finding that Tri County was disqualified from further participation in the Supplemental Nutrition Assistance Program was sufficient to establish that the Respondent trafficked FAP benefits, and was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at Tri County.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. 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 overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 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 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 his FAP benefits. Because this was Respondent's first IPV, he is subject to a one-year disqualification under the FAP program. BEM 720, pp 13, 14.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1.

The OI amount for trafficking-related IPV's is the value of the trafficked benefits as determined by a court decision, the individual's admission, or documentation used to establish the trafficking determination. BAM 720, p 7. The documentation used to establish Respondent's trafficking in this case was Respondent's FAP transaction history at Tri County. This document showed all FAP transactions for the period 2008 through 2011 in the amount of \$799 by Respondent at Tri County between June 1, 2008 through January 31, 2011. Thus, the Department is entitled to recoup \$799 from Respondent.

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, concludes that:

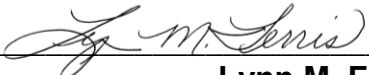
1. Respondent did did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$799 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$799 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: March 31, 2014

Date Mailed: March 31, 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]
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