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

IN T	HE MATTER OF:				
		Reg. No.: Issue No.: Case No.: Hearing Date: County:	14-009355 3005 January 14, 2015 WAYNE-DISTRICT 31 (GRANDMONT)		
ADM	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 January 14, 2015, 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).					
<u>ISSUES</u>					
1.		State Disability A Child Developme	ssistance (SDA) ent and Care (CDC)		
2.	Did the Department establish, by clear and committed an Intentional Program Violation (II		ce, that Respondent		
3.		State Disability A	ssistance (SDA)? nt 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 August 25, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.			
2.	The OIG $\boxtimes$ has $\square$ has not requested that Respondent be disqualified from receiving program benefits.			
3.	Respondent was a recipient of $\ \square$ FIP $\ \boxtimes$ FAP $\ \square$ SDA $\ \square$ CDC $\ \square$ MA benefits issued by the Department.			
4.	Respondent $\boxtimes$ was $\square$ 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 October 1, 2012 to December 31, 2012 (fraud period).			
7.	The Department alleges that Respondent trafficked \$876.97 in $\Box$ FIP $\boxtimes$ FAP $\Box$ SDA $\Box$ CDC $\Box$ 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 $\square$ was $\boxtimes$ was not returned by the US Post Office as undeliverable.			
CONCLUSIONS OF LAW				
Adm (BEI Aug Serv Prog	artment policies are contained in the Department of Human Services Bridges hinistrative Manual (BAM), Department of Human Services Bridges Eligibility Manual M), and Department of Human Services Reference Tables Manual (RFT). Prior to ust 1, 2008, Department policies were contained in the Department of Human vices Program Administrative Manuals (PAM), Department of Human Services gram Eligibility Manual (PEM), and Department of Human Services Reference edules 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 Ols 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 \$876.97 from October 1, 2012 to December 31, 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.

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 (October 2012), p. 3.

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

 there exists two food stores (same owner) (hereinafter referred to as "Store 1" and "Store 2"), where the United States Department of Agriculture ("USDA") conducted an investigation at both Stores' regarding food trafficking and ultimately led to Store 1 and 2's permanent

- disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store 1 and 2 had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area;
- over a period of time, Respondent had high dollar and closely related transactions at both Store 1 and 2 which is consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented evidence from the USDA that Store 1 and 2 engaged in FAP trafficking, which resulted in both Store 1 and 2's permanent disqualification from SNAP on May 1, 2013. See Exhibit 1, pp. 19-23.

Second, the Department presented as evidence an e-mail from the USDA detailing a brief synopsis of the trafficking being conducted at Store 1 and 2. See Exhibit 1, p. 27.

Third, the Department's OIG investigative report stated that each Store is operated by the same individual and is located within one block of each other. See Exhibit 1, p. 4. It should be noted that the Department presented a map of how far each Store is from one another. See Exhibit 1, p. 88. The Department's OIG investigative report stated that each Store is a gas station/convenience store that carries a moderate inventory and the Stores have no shopping carts or baskets, one point of sale device, the cash register areas are enclosed with bullet-proof glass making it impractical to purchase large amounts of merchandise and impossible to conduct these transactions in a short period of time. See Exhibit 1, p. 4. In summary, the Department infers that both Stores did not have the food items or the physical means to support high dollar transactions and multiple purchases in a short time period.

Also, the Department presented pictures in an attempt to demonstrate the above description of both Stores' layout. A review of the photos does demonstrate that each Store has purchasable foods and non-purchasable foods. See Exhibit 1, pp. 71-88. The Department, though, did present a photo of the bullet proof barrier, which would make it difficult to purchase high dollar transactions at Store 1 and 2. See Exhibit 1, pp. 71-88.

Fourth, to establish that Respondent trafficked his FAP benefits at each Store, the Department relied on Respondent's FAP transaction history. See Exhibit 1, p. 18. For example, on October 18, 2012, Respondent made three separate transactions within one minute at Store 2 and the total was \$276.97. See Exhibit 1, p. 18. Then, four minutes later, Respondent conducted additional transactions for \$200 at Store 1. See Exhibit 1, p. 18. Respondent conducted high dollar transactions all within minutes of each purchase. See Exhibit 1, p. 18.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving his FAP benefits. First, the evidence that the Store 1 and 2 had limited counter space was persuasive as there was a bullet proof barrier, which would make it difficult to purchase high dollar transactions. See Exhibit 1, pp. 71-88. However, the pictures also showed food products that are intended for consumption.

Nevertheless, the Department's main argument was based on his FAP transaction history, which presented persuasive evidence that Respondent committed an IPV involving his FAP benefits. As shown above, the Department did present several transactions that were suspicious. All of the purchases were high dollar and closely related transactions. See Exhibit 1, p. 18. This is highly suspicious that someone would conduct so many closely related transactions at Store 1 and 2 when they are a block apart. The evidence is persuasive to conclude that the Respondent is involved in trafficking.

In summary, the Department established by clear and convincing evidence that Respondent trafficked his FAP benefits at both Stores. A review of the evidence presented large transactions and closely related transactions at both Stores that the Respondent could not reasonably purchase food items for consumption. Moreover, the Department presented credible evidence that Store 1 and 2's average transactions were greater than transactions at comparable establishments. See Exhibit 1, pp. 28-67. Thus, the Department has established 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. 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 IPVs 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 October 1, 2012 to December 31, 2012 and that Respondent trafficked \$876.97 between this time period. See Exhibit 1, p. 5.

As stated in the analysis above, the Department has established that Respondent committed an IPV involving his FAP benefits. Thus, it is found that Respondent received an OI of program benefits in the amount of \$876.97 from the FAP program. 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 $\boxtimes$ has $\square$ has not established by clear and convincing evidence that Respondent committed an IPV.			
2.	Respondent $\boxtimes$ did $\square$ did not receive an OI of program benefits in the amount of \$876.97 from the following program(s) $\square$ FIP $\boxtimes$ FAP $\square$ SDA $\square$ CDC $\square$ MA.			
The Department is ORDERED to				
	initiate recoupment procedures for the amount of \$876.97 in accordance with Department policy.			

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

Administrative Law Judge for Nick Lyon, Interim Director Department of Human Services

Date Signed: 1/22/2015

Date Mailed: 1/22/2015

EJF / cl

**NOTICE:** The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

