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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-008567
Issue No.: 3005
Case No.: [redacted]
Hearing Date: January 21, 2015
County: WAYNE-DISTRICT 31

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 hearing was held on January 21, 2015. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. Participants on behalf of the Department of Human Services (Department) included RA [redacted]

ISSUE

Whether Respondent engaged in trafficking Food Assistance Program (FAP) benefits in the amount of $[redacted]?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

(1) Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. Evidence was presented which shows that Respondent was aware of the conditions that constitute fraud/IPV and trafficking and the potential consequences.

(2) In May 2013, a USDA-FNS investigation determined that the [redacted] and [redacted] were trafficking Food Assistance Program (FAP) benefits. The determination was based on analysis of the store's Electronic Benefit Transfer (EBT) card transactions, the inventory and mix of authorized items carried at the store, and the transaction records of similar stores in the same geographic area as the store.

(3) Between May 1, 2012 and October 31, 2012 Respondent's Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card was used for transactions at the [redacted]. The timing and amount of Respondent's transactions were in a pattern and manner which does not reflect normal

purchases for the inventory and mix of authorized items carried at the [redacted] and [redacted]. The total of Respondent's trafficking transactions is $[redacted]

(4) On July 30, 2014, the Office of Inspector General submitted the agency request for hearing of this case

CONCLUSIONS OF LAW

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 1997 AACS R 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of Food Assistance Program (FAP) trafficking and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BPG GLOSSARY GLOSSARY

TRAFFICKING
The buying or selling of FAP benefits for cash or consideration other than eligible food.

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS

DEPARTMENT POLICY
FIP, RAP, SDA, CDC and FAP
People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

Policy for IPV disqualifications and over issuances is found in BAM 700 and 720.

FAP TRAFFICKING
FAP
A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. These 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.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

DEFINITIONS

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

OVER-ISSUANCE AMOUNT

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.

OIG RESPONSIBILITIES

All Programs

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

IPV Hearings

FIP, SDA, CDC, MA and FAP
OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:
1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. 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 combined 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.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained.

DISQUALIFICATION
FIP, SDA, CDC AND FAP ONLY

Disqualify an active **or** inactive recipient who:

Is found by a court or hearing decision to have committed IPV, **or**
Has signed a DHS-826 or DHS-830, **or**
Is convicted of concurrent receipt of assistance by a court, **or**
For FAP, is found by SOAHR or a court to have trafficked FAP 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.

Standard Disqualification Periods
FIP, SDA, CDC and FAP

The standard disqualification period is used in all instances except when a **court** orders a different period (see Non-Standard Disqualification Periods in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

One year for the first IPV.
Two years for the second IPV.
Lifetime for the third IPV.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record.

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, finds that the Department has established by clear and convincing evidence that Respondent engaged in Food Assistance Program (FAP) trafficking in the amount of $683.00 which the Department is entitled to recoup. This is Respondent's 1st Food Assistance Program (FAP) Intentional Program Violation (IPV) and the Department may disqualify Respondent in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2014).

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.

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

Date Signed: **2/12/2015**

Date Mailed: **2/12/2015**

GFH/hj

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.

cc: [redacted]