

**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.: 201427186
Issue No.: 3055
Case No.: ██████████
Hearing Date: December 8, 2014
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

**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 December 8, 2014 from Detroit, Michigan. The Department was represented by 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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits for a period of one year?

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 February 17, 2014 to establish an OI of benefits received by Respondent as a result of Respondent having trafficked program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits for a period of one year.
3. Respondent was a recipient of FAP benefits during the period of January 1, 2010 through October 30, 2013, the fraud period in question.
4. During the alleged fraud period, Respondent was issued ██████ in FAP benefits that the Department alleges was trafficked or otherwise not eligible for due to IPV.
5. The Department alleges that the IPV in question is the result of three alleged instances of trafficking and one alleged intentional failure to report a change in residence.
6. This was Respondent's first alleged IPV.
7. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 1999 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700 (2014).

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 their reporting responsibilities.

IPV is suspected when there is 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 (2014).

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
 - (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section.

7 CFR 273.16(c)(6).

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

- benefit overissuance 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, or
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed 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 (2014).

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. 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 (2014).

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, pg. 1 (2011).

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the FAP program. Thus, the Department must not only prove that Respondent committed an act, but that there was intent to commit the act.

In the current case, the Department alleges IPV stemming from four distinct fact patterns:

- 1) Trafficking at the [REDACTED];
- 2) Trafficking at [REDACTED]
- 3) Trafficking at [REDACTED]
- 4) An intentional failure to report a change of residence to the [REDACTED] in September, 2013, resulting in a benefit overissuance.

In the current case, the Administrative Law Judge is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent trafficked their FAP benefits or had an overissuance as a result of a failure to report a change of residence.

The burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent more than likely trafficked or that there was FAP trafficking occurring at the store in question. The Department must prove in a clear and convincing manner that Respondent trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent committed an act that would constitute trafficking or committed an offense that resulted in an overissuance.

The Department has failed to prove that in the current case. Each specific incident will be addressed separately, below.

████████████████████

With regards to this trafficking allegation, the undersigned must note that the store owner in question has not been convicted of FAP trafficking at this point in time. Regardless, even if the store had been convicted, the store is not the subject of this administrative hearing; the Respondent is the subject, and the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

The Department's case relies on three key pieces of evidence: that the store in question had FAP transaction benefits far in excess of other stores of its type; that the store in question had very little actual food stock, and that Respondent shopped at that store.

With regard to the store itself, the undersigned is prepared to say that the Department showed clearly and convincingly that the store trafficked FAP benefits. The evidence presented painted a clear picture, especially when compared to other stores in the area that are not under investigation.

Unfortunately, the store is not the respondent in the current case.

In the current case, with this Respondent, the Department has only proven that Respondent shopped at the store in question on a single occasion. While it is true that the store only carried limited food goods, limited food goods does not equal zero food goods. The undersigned cannot find that merely shopping at a store that was an FAP trafficker constitutes actual trafficking, especially considering that the store in question did offer goods that could be purchased with FAP benefits. Mere association is not clear and convincing evidence of malfeasance.

Make no mistake—the undersigned believes that, based on the exact amount of the transaction, Respondent most likely trafficked FAP benefits. However, most likely is a threshold far below clear and convincing, and the undersigned cannot hold a respondent guilty of an IPV for benefit trafficking on a probable occurrence.

The evidence in this case only shows that the store in question trafficked FAP benefits, and Respondent shopped at that store on a single occasion—nothing more. Without some sort of affirmative evidence that Respondent engaged in trafficking, no IPV can be found. A high dollar amounts spent at the store on a single transaction only raises the specter of trafficking and does nothing to actually show trafficking occurred.

The idea that trafficking occurred is, at the very most, probable. The store in question has not been convicted. A guilty verdict has not been reached and, legally speaking, at the current point in time, the store is a merely an accused trafficker, albeit one who has been administratively disqualified from participating in the SNAP program due to trafficking. IPV most definitely cannot be found for associating with an accused trafficker.

Finally, as has been noted above, the accusation of trafficking stems from a single transaction for \$ [REDACTED]. This single transaction does not constitute a pattern of any sort, and has no ability to be differentiated from other, clearly lawful, transactions, other than the transaction was with an accused food stamp trafficker. As a result, this transaction cannot be clearly and convincingly be put in the category of trafficked benefits.

As such, the undersigned declines to find IPV or trafficking for the transaction in question at [REDACTED].

[REDACTED]

With regard to this trafficking allegation, there is no evidence that supports that Respondent trafficked benefits here. The Department cites as evidence a transaction log showing that the Respondent had transactions at this location, and an article from the Detroit Free Press, dated September 18, 2013, that [REDACTED] had been charged with food stamp fraud in an expansive operation by the US Attorney General and the USDA targeting the Eastern Market area of Detroit.

No other evidence was offered to show that Respondent's transactions consisted of FAP benefit trafficking.

As stated above, mere association is not evidence of malfeasance. While the store in question may be charged, it is not evidence of IPV that Respondent shopped at this store, even on multiple occasions. Without further evidence of trafficking, including the particulars of the trafficking involved, how specifically Respondent was involved in the trafficking, and what exactly Respondent did, the undersigned cannot even say that trafficking was more likely than not in this instance.

As such, the undersigned declines to find IPV or trafficking for the transactions at [REDACTED]
[REDACTED]
[REDACTED]

With regard to this trafficking allegation, the Department cites as evidence for trafficking the fact that Respondent's EBT card was used 6 times at this store (a membership warehouse club), and that Respondent was not a member of the warehouse club. The Department submitted proof showing that the transactions in question were conducted under memberships registered to another person.

Unfortunately for the Department, no evidence has been submitted to show that Respondent was not actually at the warehouse club when the transactions took place, and that the Respondent did not authorize the transactions, or purchase the food themselves. No evidence was presented to show that Respondent did not use another person's warehouse club membership card herself.

It is not an IPV to use the warehouse membership card of another person; it is an IPV if claimant let another use the card to buy food that was not for claimant's household group.

Unfortunately, with no evidence to distinguish the former from the latter, the undersigned can only say, at most, that it is 50% likely that Respondent trafficked or sold her benefits to the owner of the account the food in question was purchased under.

While the Department argued that they could find no connection between the Respondent and the owners of the warehouse memberships in question, it must be stated that absence of evidence is not evidence of absence; that is, just because the Department was unable to find a connection does not mean that the connection did not exist.

Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true (M Civ JI 8.01). This standard is greater than preponderance of the evidence but less than beyond a reasonable doubt.

As there is no evidence to distinguish who actually purchased the food in question (as opposed to the owner of the membership account the food was purchased under), the undersigned cannot say that the transactions in this case meet the clear and convincing evidence standard to find IPV. As the evidence is not clear and convincing, IPV cannot be found in this instance.

Change of Residence

The prerequisite for an IPV, client error, or agency error is proof of an actual overissuance of benefits. Even if the Department presents clear and convincing evidence that the respondent intended to defraud the Department, without proof of an

actual overissuance, there can be no Intentional Program Violation and recoupment of benefits. The same standard holds for agency error and client error; there can be no error or recoupment without first proving the amount of that recoupment. As such, unless the Department first proves an overissuance, any evidence of intent to commit a program violation is irrelevant.

Therefore, the Department must first establish, through a preponderance of the evidence, that an overissuance occurred and the amount of that overissuance. Where the Department is unable to or fails to prove the amount of overissuance, no overissuance can be said to have occurred.

The Department has shown, through at least a preponderance of evidence, that the Respondent changed residency to the State of ██████████. However, the undersigned does not believe that the Department has proven that there was an overissuance in the current case, because the Department has failed to establish the exact date of the change in residency.

Department Exhibit 3, page 72, shows that the Respondent began using benefits in Wyoming on September 16, 2013. On September 4, 2013, a transaction showed that the Respondent was still using benefits in Michigan. The Department has therefore alleged that Respondent became a resident of Wyoming on September 16, 2013.

The undersigned is hesitant to reach this conclusion. A benefit transaction history only definitively shows where benefits were used; it is not a statement that definitively proves residency. While Respondent was undoubtedly located in ██████████ on September 16, 2013, this is not evidence that Respondent became a citizen of ██████████ on that date. In order to show a residency change, documentation showing definitive residency, such as a lease, an application for benefits, an ID change, or some affirmative step to relinquish citizenship in Michigan must be produced.

While the investigative report alluded that Respondent applied for food stamp benefits in Wyoming in the month of September 2013, no documentary evidence was produced to support this contention. The sole piece of evidence in this regard was an email, dated January 4, 2014, from the ██████████ DHS analogue, which stated that the Respondent had been “in ██████████ a few months”. A second email, dated January 27, 2014 noted that Respondent’s ██████████ benefits would be closing, but this email contained no information as to when the ██████████ benefits began or when Respondent first filed a benefit application in ██████████. Finally, an email dated December 24, 2013 to the ██████████ police Department found that Respondent had signed up for a Christmas toy giveaway using a Michigan ID card.

Nothing in these emails definitively establishes a date Respondent became a resident of ██████████. At most, using a common definition of “a few months”, we might be able to make a guess that Respondent became a resident there in October or November, 2013. Unfortunately, guesses are not acceptable when dealing with standards of evidence and Intentional Program Violations. The simple fact of the matter is that Respondent’s date

of residency change has not been proven in a clear and convincing manner, or even by a preponderance of the evidence. While a preponderance of the evidence shows that Respondent was definitively a resident of ██████████ by January, 2014, no evidence exists to show when that residency definitively began.

Most generously, the undersigned might state that respondent, by signing up for the toy giveaway program, became a resident of ██████████ December, 2013. This statement would ignore the fact that Respondent was still presenting herself as a Michigan resident by using a Michigan ID card, but for the sake of argument, the undersigned will use this month.

Assuming that this was the actual, proven date of residency change, Respondent would then have 10 days to report said change. BAM 105, pg 10 (2013). Therefore, Respondent would have until at least December 10, 2013 to report the change of residency. As such, Respondent's benefits could not close before January, 2014. The next issuance affected would be January 1, 2014.

However, no evidence was submitted that showed Respondent's benefits stopped after this date. The transaction history showed benefit usage through October, 2013. While Respondent may have received benefits after this date, no evidence was submitted in this regard. As there is no evidence showing that Respondent was issued benefits after October 31, 2013, and the evidence only proves, at most, that Respondent was ineligible for benefits as of January, 2014, there is no evidence that Respondent was overissued benefits.

Without an overissuance, there can be no IPV, even assuming that Respondent intentionally failed to report a change in residency—though it should be noted that the undersigned finds no clear and convincing evidence that a failure to report a change was intentional.

As such, with no IPV, and no overissuance, the undersigned declines to find recoupment of benefits and IPV for this instance.

Conclusion

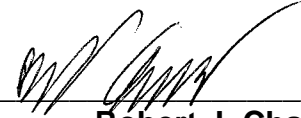
The undersigned cannot hold that the benefits sought to be recouped in this case, ██████████, were used for trafficking or were the result of an overissuance, for the reasons discussed above. As such, any recoupment in this case must be denied. Furthermore, the undersigned holds that there is no clear and convincing evidence of Intentional Program Violation in the current case, and declines to disqualify the Respondent from the Food Assistance Program.

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 not commit an IPV.
2. Respondent did not receive an OI of program benefits in the amount of [REDACTED] from the Food Assistance Program.

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



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: February 24, 2015

Date Mailed: February 24, 2015

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.

RJC/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]