

**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.: 14-009737
Issue No.: 3005
Case No.: ██████████
Hearing Date: January 15, 2015
County: WAYNE-31 (GRANDMONT)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 15, 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).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for Food Assistance Program (FAP)?

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 26, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was 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. The Department had no information that Respondent had an 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 through July 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued ██████████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ ██████████
9. This was Respondent's first alleged IPV.
10. 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 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 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 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 \$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 because he trafficked ██████ of his FAP benefits at ██████. Trafficking is (i) the buying or selling of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, pp 1-2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2014), p 66. 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 (July 2013), pp. 2-3.

The Department presented evidence that the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) charged ██████ with trafficking and that in lieu of a permanent disqualification for trafficking, imposed a civil money penalty as a sanction. (Exhibit 1, pp. 9-11 and 28-30). See 7 CFR 271.2; 7 CFR 278.6 (e)(1, (i) and (j)). To support a trafficking case against Respondent, however, the Department must establish, by clear and convincing evidence, that *Respondent* engaged in trafficking when he used his FAP benefits at ██████.

The Department presented evidence of Respondent's FAP transaction history at ██████ showing a pattern of transactions within minutes for several months (October, November, and December 2012, and April 2013, where he spent all his food assistance benefits in several minutes leaving \$█████ left on the EBT card. Five transactions were made on October 9, 2012 beginning at 12:29 p.m. and ending at 12:39 p.m. within 10 minutes leaving a ██████ balance. Exhibit 1 p. 51. Many of the transaction amounts ended in ██████ and were in amounts exceeding ██████. The Department contended that Respondent's transactions greater than ██████ on any given day or multiple transactions in the same day greater than ██████ were trafficked because ██████ did not have the inventory or infrastructure to support the high dollar transactions, as the normal amount for a transaction at this type of store in the ██████ area is around \$4-\$5 and that FAP benefits were being used to purchase ineligible nonfood items at ██████.

Specifically, the Department argued based on the USDA investigation that ██████ is a convenience store with limited counter space, no shopping carts or baskets, one cash register, only one POS device and no optical scanner. With respect to the inventory, the Department stated that ██████ had a limited supply of staple food stock, which

included prepackaged convenience foods and snack items (many of which the Department stated were expired), no fresh meat, produce or frozen foods. The Department further argued that the store had ineligible items which included tobacco, lottery, alcohol and household supplies. The Department presented documentation to show that the cash register area is enclosed with bulletproof glass, making it impractical to purchase large amounts of food in short amounts of time.

A review of Respondent's FAP transaction history at [REDACTED] that Respondent made several purchases in individual amounts greater than [REDACTED] on a given day during the fraud period, some of which were on the same day, within minutes of each other, which the Department argued is indicative of trafficking.

The foregoing evidence was sufficient, when viewed under the totality of the circumstances, to establish by clear and convincing evidence that Respondent trafficked his FAP benefits at [REDACTED]

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. 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. 13. 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 by trafficking FAP benefits. Because this was Respondent's first IPV, he is subject to a one-year disqualification under the FAP program.

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. The OI amount for a trafficking-related IPV 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, 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, which can be established through circumstantial evidence. BAM 720, p 7.

The Benefit Summary Inquiry provided by the Department establishes that Respondent was issued FAP benefits by the State of Michigan during the fraud period and the FAP transaction history the Department presented showed Respondent had [REDACTED] in

