

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-013270
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 07, 2015
County: WAYNE-DISTRICT 76 (GRATIO

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on April 7, 2015. The Respondent did not appear. The record did contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without the Respondent. Participants on behalf of the Department of Human Services (Department) included Regulation Agent, [REDACTED] of the Office of Inspector General (OIG).

ISSUE

Whether the 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) The Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. The Respondent signed the affidavit in the Assistance Application (DHS-1171) certifying that he was aware of the conditions that constitute fraud/IPV and trafficking and the potential consequences.
- (2) In September, 2013, a USDA-FNS investigation determined that the Ftoni Meat and Produce was 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) From May 11, 2011 to September 11, 2013, the Respondent's Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card was used for transactions at the [REDACTED]. The timing and amount of the 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]. The total of Respondent's trafficking transactions is [REDACTED].
- (4) The OIG also alleges, as part of one IPV, that the Respondent used Michigan FAP benefits out of state from July 1, 2014 to September 30, 2014. The Department alleges that this resulted in an OI [REDACTED] that the Department is entitled to recoup. Regulation [REDACTED] testified that he combined both OI periods and amounts into one IPV because it is in his discretion to do so.
- (5) On October 13, 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 AACR 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.

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 IPV 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.

DISQUALIFICATION FIP, SDA, AND FAP

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, 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.

In this case, the Administrative Law Judge concludes that the evidence establishes that the Respondent sold his FAP benefits from May 11, 2011 to September 11, 2013. The Administrative Law Judge concludes that Department has met its burden of proving, by a clear and convincing standard, that the Respondent has committed his second IPV. Most persuasive to this Administrative Law Judge is almost every purchase made at Ftoni Meat and Produce, Inc. is for an even dollar amount and many of the transactions were for an even [REDACTED] amount. Lastly, most transactions left less than [REDACTED] on the Respondent's EBT card.

In this case the Department asserts a single FAP IPV, based upon two separate acts of the Respondent, with two separate OI periods for each program. The Department has combined two separate OI periods and two separate IPV's into this one case. Department of Human Services Bridges Administration Manual (BAM) 720 p. 7, directs how to determine the beginning of an over-issuance period and the over-issuance period end date. The over-issuance period end date is defined as the month before the benefit is corrected. Department policy does not provide any specific criteria to identify or define "benefit correction". However, it is certain that the benefit is corrected when the recipient is no longer receiving an over-issuance.

Because specific and separate actions caused the two separate over-issuance periods and amounts, they are not a single IPV. Department policy provides for separate and larger disqualifications for a first, second, and third IPV. Different consequences for separate IPV's, shows the intention to differentiate between separate actions causing over-issuances. The Department policy does allow combination of OI amounts for different programs when all the OI's caused by the same specific action. That is not the same as combining OI amounts from separate OI periods caused by separate actions. This Administrative Law Judge could find nowhere in the policy that permits the OIG Regulation Agent to exercise discretion in combining separate IPV's and/or OI periods.

The information sent to the Respondent for this hearing identified it as a second IPV. The consequence of a second IPV is a two year disqualification. The notice does not state the hearing is also for a third IPV. The consequence of a third IPV is a lifetime disqualification. The Respondent's due process rights would be violated if this hearing resulted in a determination that the Respondent had committed two separate IPV's and would be disqualified for a lifetime.

The Regulation Agent testified that the OI period for the alleged second IPV is for May 11, 2011 to September 11, 2013 resulting in an OI of [REDACTED]. The Regulation Agent testified that the OI period for the alleged third IPV is from July 1, 2014 to September 30, 2014 and resulted in an OI of [REDACTED]. As such, this Administrative Law Judge dismisses the portion of this hearing which addresses the Respondent's alleged third IPV.

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 the Respondent engaged in Food Assistance Program (FAP) trafficking in the amount of [REDACTED] which the Department is entitled to recoup. This is Respondent's second 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 (2013).

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

Susanne E. Harris

Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/8/2015**

Date Mailed: **4/8/2015**

SEH/sw

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:

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