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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-013672
Issue No.: 3005
Case No.: [redacted]
Hearing Date: April 22, 2015
County: WAYNE-DISTRICT 55 (HAMTRAMCK)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 22, 2015, from Detroit, Michigan. The Department was represented by [redacted], 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 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 October 15, 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 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 March 1, 2013 to June 30, 2013 (fraud period).

7. The Department alleges that Respondent trafficked $[redacted] in FAP benefits.

8. This was Respondent's first alleged IPV.

9. 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of $500.00 or more under the AHH program.

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is $500 or more, or

  - the total amount is less than $500, 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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.

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, BEM 203 states that 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.

BEM 203 (October 2012), p. 3.

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

- OIG determined FAP trafficking took place at [redacted] businesses ("businesses") all located by one another, specifically, Respondent allegedly conducted FAP trafficking at Store 1;
- The United States Department of Agriculture ("USDA") conducted an investigation at Store 1 regarding food trafficking and determined that Store 1 was engaged in food trafficking and ultimately led to Store 1's permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- OIG determined that the businesses (including Store 1) were utilizing "runners" who would use the clients Electronic Benefits Transfer (EBT) cards at the businesses or have the card numbers and pin number for the businesses to "key" the food stamps into the businesses point of sales devices. USDA/OIG determined the clients did not visit/shop at the stores within [redacted];
- The businesses sold meats by the pound and clients would receive cash in exchange for their EBT cards;
- Respondent had high dollar/even amount transactions (except for one) at Store 1 which is consistent with traditional trafficking patterns/scheme taking place at the businesses; and

- thus, Respondent trafficked FAP benefits.

First, the Department presented evidence from the USDA that Store 1 engaged in FAP trafficking, which resulted in Store 1's permanent disqualification from SNAP on May 16, 2014. See Exhibit 1, pp. 11-12.

Second, the Department presented pictures in an attempt to demonstrate a description of Store 1's layout. See Exhibit 1, pp. 13-22. The Department also presented a map of the Store's location. See Exhibit 1, p. 25.

Third, to establish that Respondent trafficked his FAP benefits at Store 1, the Department relied on Respondent's FAP transaction history. See Exhibit 1, p. 26. For example, Respondent had all high dollar transactions and a majority of them were even amounts. See Exhibit 1, p. 26. For example, on March 29, 2013, Respondent conducted a large transaction for [redacted] and the following day, conducted another transaction for [redacted] See Exhibit 1, p. 26.

Moreover, the Department indicated that Respondent would spend almost his entire FAP allotment at Store 1. See Exhibit 1, p. 26. The Department also argued that Respondent reported being homeless and he would be unable to store such a large quantity of meat products. See Exhibit 1, p. 4. In summary, the Department argued that Respondent's transactions were consistent with traditional trafficking patterns/scheme taking place at the businesses.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV involving his FAP benefits.

First, the evidence established that Store 1 and 2 were involved in the FAP trafficking scheme taking place at the businesses. See Exhibit 1, pp. 4-25.

Second, 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. Respondent had all high dollar and even amount transactions (majority) that were highly suspicious. See Exhibit 1, p. 26. In fact, Respondent spent [redacted] in FAP benefits over a two-day span, which is highly suspicious. See Exhibit 1, p. 26. The evidence established that Respondent's transactions are consistent with the trafficking scheme taking place at the businesses. Thus, the Department has established that Respondent committed an IPV involving his FAP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent

receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

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

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 $[redacted] 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 **has** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent **did** receive an OI of program benefits in the amount of [redacted] from the FAP benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of $[redacted] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months.**

Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/23/2015**
Date Mailed: **4/24/2015**

EJF/tm

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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc: [redacted]