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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-003268
Issue No.: 3005
Case No.: [redacted]
Hearing Date: May 13, 2015
County: Oakland-District 4

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 May 13, 2015, hearing was held on May 13, 2015, from Lansing, 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 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 March 11, 2015, 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 received Department Publication "How to Use Your Michigan Bridge Card," explaining in detail that the misuse of food benefits is a violation of state and federal laws punishable by disqualification from the program, fine, prison or all three and repayment of the food benefits. DHS-Pub-322 (11-10), pp 30-47.

5. As a result of an investigation by the OIG for food stamp fraud, the primary account holder of [redacted] is [redacted]. [redacted] is the owner. [redacted] admitted to the OIG that she gave cash to individuals, $50 in cash for every $100 in food stamps, and used the food stamps to purchase food for the [redacted]. [redacted] identified Respondent as a person she knew and gave cash to in exchange for the use of her food stamp benefits to purchase items for the restaurant. Transactions records of [redacted] showed that approximately 57 unique Bridge cards were used to make purchases at [redacted] through the account belonging to about 36 individual recipients, including Respondent. The items purchased history for this account indicated that the majority of the transactions, including EBT Bridge card and non-EBT purchases, involved the purchase of bulk food items suitable for use in a restaurant or catering operation. [redacted] is not an authorized EBT retailer. (Dept. Ex A, p 4).

6. The EBT transaction history for Respondent documented transactions through the [redacted] membership and the items purchased in the [redacted] transactions were also consistent with those purchased for use at the [redacted] restaurant. (Dept. Ex A, p 4).

7. Respondent received $[redacted] in Michigan FAP benefits from November 1, 2011, through December 31, 2011. Respondent trafficked $[redacted] in FAP benefits from the State of Michigan through the [redacted] membership account. (Dept. Ex A, pp 4, 13, 18-19).

8. The Department alleges that Respondent received an OI in FAP benefits in the amount of $[redacted]

9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

10. This was Respondent's first alleged IPV.

11. 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

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 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.

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 following are the relevant policy statements and instructions Department caseworkers follow.

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 $500 or more, **or**
  - the total OI 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, p 12 (10/1/2014).

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 (10/1/2014), 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.

Disqualification

A court or hearing decision that finds a client committed an 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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/2013), p 2. 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.

The 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 (10/1/2014).

In this case, this is Respondent's first IPV.

Overissuance (OI)

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.

A FAP recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

Here, the Department has established that Respondent was aware that misuse of her food benefits is a violation of state and federal laws for which she may be disqualified from the program, fined, put in prison, or all three and repayment of the food benefits.

The evidence showed that Respondent was identified by [redacted] as selling her Food Stamp benefits for 50 cents on the dollar. In turn, [redacted] used Respondent's EBT benefits at [redacted] through the [redacted] account to purchase items and supplies for the restaurant.

Based on the evidence presented and the credible testimony of the Resident Agent, the Administrative Law Judge found the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter by trafficking their FAP benefits.

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 overissuance of FAP program benefits in the amount of $[redacted]

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

It is FURTHER ORDERED that Respondent be disqualified for 12 months from receiving FAP benefits.

Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/21/2015**

Date Mailed: **5/21/2015**

VLA/las

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]