

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

IN THE MATTER OF:

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████████████████████
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Reg. No.: 15-000245
Issue No.: 3005
Case No.: ██████████
Hearing Date: June 22, 2015
County: ST. CLAIR

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 or DHHS), 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 three-way telephone hearing was held on June 22, 2015, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: Respondent, ██████████; and Respondent's sister/witness, ██████████.

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 January 9, 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 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 July 1, 2009 to July 31, 2012 (fraud period).
7. The Department alleges that Respondent trafficked ██████████ 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 (January 2009), p. 2.

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

- there exists a food store (hereinafter referred to as "Store"), where the United States Department of Agriculture ("USDA") conducted an investigation at the Store regarding food trafficking and determined that the Store was engaged in food trafficking (Exhibit A, p. 4);
- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area (Exhibit A, pp. 38-53);
- Trafficking activities at the Store included purchases that were excessive for the Store's (small grocery store) size and type of inventory;
- Clients received cash or purchased ineligible items in exchange for Supplemental Nutrition Assistance Program (SNAP) benefits;
- Clients were able to purchase eligible and ineligible items on credit and pay for them, along with a surcharge, when their EBT card reloaded each month;
- over a period of time, Respondent had high dollar transactions at the Store, which is consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented pictures in an attempt to demonstrate a description of the Store's layout. See Exhibit A, pp. 54-74.

Second, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent's FAP transaction history. See Exhibit A, pp. 23-24. For example, on October 4, 2009 and November 6, 2009, Respondent made purchases for \$█. See Exhibit A, p. 23. Respondent repeated this pattern of large purchases throughout the alleged fraud period. See Exhibit A, pp. 23-24.

At the hearing, Respondent acknowledged that she did conduct transactions at the Store; however, she testified that she only purchased eligible food items. However, Respondent testimony indicated that the Store allowed her to purchase eligible foods items on credit and pay for them later when her EBT card reloaded for any transaction over █. Respondent testified that she did not know she was not allowed to conduct these types of transactions until a later date. Respondent's witness reiterated the same testimony Respondent provided during the hearing.

In response, the Department's OIG investigation report indicated that maintaining a line of credit is not an acceptable use of FAP benefits. Specifically, 7 CFR 274.7(b), prior payment prohibition, provides that:

Program benefits shall not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. Neither shall benefits be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

Thus, the Department's position is that Respondent cannot maintain a line of credit. However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV," including an IPV based on trafficking. BAM 720, p. 1; 7 CFR 273.16(c); and 7 CFR 273.16(e)(6). Respondent's testimony credibly established that she did not intend to commit a violation of the FAP program by maintaining a line of credit. Respondent's credibility is support by her witness, who reiterated that Respondent did not intentionally commit an IPV.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of 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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent not is disqualified from FAP benefits for 12 months. 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. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM 700, p. 1. Additionally, for 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.

BAM 720, p. 8

As discussed above, the Department failed to support its allegation that Respondent intentionally committed an IPV by trafficking her FAP benefits at the Store between July 2009 to July 2012. However, Respondent acknowledged that the Store allowed her to purchase eligible foods items on credit and pay for them later when her EBT card reloaded for any transaction over [REDACTED]. Even though the undersigned finds Respondent's actions unintentional, her transactions still violates 7 CFR 274.7, which precludes the Respondent from purchasing eligible food items on credit and paying for them later with their Bridge card. See Exhibit A, p. 94. A review of Respondent's transactions finds the total amount for all her transactions over [REDACTED] during the OI period to be [REDACTED]. See Exhibit A, pp. 23-24. Thus, the Department is entitled to recoup or collect the [REDACTED] because Respondent was not entitled to use her FAP benefits on a line of credit. See 7 CFR 274.7; BAM 700, p. 1; BAM 720, p. 8; and BAM 715 (July 2014), p. 1 (a client/CDC provider error overissuance occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the Department).

