

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

IN THE MATTER OF:



Reg. No.: 15-003495
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: May 20, 2015
County: Washtenaw (District 20)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 May 20, 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 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 13, 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 her responsibilities as a FAP recipient, including not allowing other to use her EBT card and not trafficking in FAP benefits, and that fraudulent participation in FAP could result in criminal or civil or administrative claims.
5. Respondent did not have 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 September 1, 2011, through April 30, 2014, (fraud period).
7. During the fraud period, the Department alleges that Respondent trafficked \$ [REDACTED] in FAP benefits issued by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's second 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 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:

- 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 1, 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 1, 2014), p. 7; 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.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700 (May 1, 2014), p. 8, BAM 720, p. 2.

“Trafficking” is the buying or selling of FAP benefits for cash or consideration other than eligible food; selling products purchased with FAP benefits for cash or consideration other than eligible food; or purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700, p. 2.

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.

The above cited BAM 700 and 720 policy excerpts indicate intent is not needed for a suspected IPV based on FAP trafficking. However, pursuant to 7 CFR 273.16(e)(6) the criteria for determining an IPV still includes clear and convincing evidence that the client has committed, and intended to commit, an IPV. Further, 7 CFR 273.16(c)(2) sets out the definition of an IPV, which includes intentionally committing any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of coupons, authorization cards, or reusable documents used as part of an automated benefit delivery system (access device) is an IPV.

The Department asserted Respondent did knowingly use, transfer, acquire, or purchase a food stamp access device other than authorized by the food stamp act of 1977. (Department Exhibit A, page 1) The Investigation Report documented an interview with Respondent during which Respondent stated she was aware that the father of her children would take/use her FAP card at times. While Respondent did not give him permission, she did not stop him from using the card either. There was no evidence that Respondent had any impairment(s) that limited her understanding or ability to comply with her responsibilities as a FAP recipient.

The Respondent’s FAP benefits were used at a business known to engage in FAP trafficking. Respondent had many transactions at this store that were suspicious for trafficking because they were for an even dollar amount and/or well above the average transaction amount for this type of store and/or within a few minutes of each other.

In this case, the Department has presented sufficient evidence that the Respondent intentionally trafficked in FAP benefits during the fraud period. Accordingly, the Department has established by clear and convincing evidence that Respondent committed an IPV based on FAP trafficking.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits or for trafficking FAP with a value of \$500 or more. For all other IPV cases involving FAP, 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, pp. 16-18. 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 evidence of record did establish that Respondent committed a FAP trafficking IPV; therefore, she is subject to disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

The OI amount for FAP 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

In this case, Respondent's EBT transaction history documents numerous transactions indicative of FAP trafficking. These include transactions of a higher amount than would be expected for this type of store, transactions that were for an even dollar amount, and transactions completed within a few minutes of each other. For example, on January 5, 2013, there was a transaction for \$ [REDACTED] at [REDACTED] p.m., a transaction for \$ [REDACTED] at [REDACTED] p.m., a transaction for \$ [REDACTED] at [REDACTED] p.m., and another transaction for \$ [REDACTED] at [REDACTED] p.m. It would be unwarranted to find that Respondent's transactions were conducted without the presence of fraud.

The documentation of Respondent's purchases was sufficient to establish the alleged amount of trafficked FAP benefits, \$ [REDACTED]. Accordingly, the OI amount is \$ [REDACTED] during the above-mentioned fraud period.

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 program.

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 in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **6/5/2015**

CL / jaf

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:

