

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006462
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 17, 2015
County: Calhoun

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 telephone hearing was held on June 17, 2015, from Lansing, Michigan. The Department was represented by [REDACTED] and [REDACTED], Regulation Agents of the Office of Inspector General (OIG). Respondent personally appeared and testified.

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 April 30, 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 applied for FAP benefits on September 23, 2014, indicating she had a mental and physical disability. (Dept. Ex A, pp 44-70).
5. Photographs were presented of a person, other than Respondent, using Respondent's Bridge card containing Respondent's FAP benefits, on March 13, 2015, at [REDACTED] (Dept. Ex A, pp 71-74).
6. Respondent testified during the hearing that she was in a neck brace and needed something to eat and gave her FAP card to a friend. Respondent testified she did not know the person in the photographs using her FAP card.
7. The Department alleges Respondent trafficked \$ [REDACTED] in Michigan FAP benefits from March 1, 2015, and March 31, 2015. (Dept. Ex A, pp 11-43, 71-74).
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. Respondent testified she has physical and mental impairments.
10. This was Respondent's first alleged IPV.

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.

FAP trafficking is defined 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 (5/1/2014).

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 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 (10/1/2014).

In this case, this is Respondent's first alleged 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).

In this case, the Department presented evidence that on March 13, 2015, a person other than Respondent used Respondent's Bridge card at [REDACTED]. The Department alleges that this one time use of Respondent's Bridge card by an unauthorized person is FAP trafficking.

However, FAP trafficking is defined as the buying or selling of FAP benefits for cash or consideration other than eligible food; the selling of 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 (5/1/2014). There was no evidence that Respondent bought or sold her FAP benefits, sold products purchased with FAP benefits or dumped products and returned the containers for a cash refund deposit.

Moreover, Respondent admittedly has physical and mental disabilities as she noted on her FAP application and credibly testified to during the hearing.

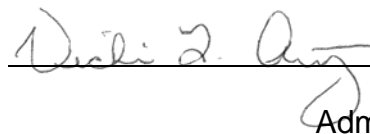
As a result, the Department failed to present the necessary clear and convincing evidence to establish the Department's case and failed to satisfy its burden of showing Respondent trafficked FAP benefits.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: **6/18/2015**

Date Mailed: **6/18/2015**

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:

