

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

IN THE MATTER OF:



Reg. No.: 14-010426
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: March 09, 2015
County: GENESEE-DISTRICT 2

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 9, 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 (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 (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 September 8, 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 Food Assistance 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 **did not have** a known 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 [REDACTED] (fraud period).
7. During the fraud period, the Department alleges that Respondent trafficked \$446.45.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$446.45.
9. This was Respondent's **first** 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:

- 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), p. 12-13; ASM 165 (May 2013), p. 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] where the Department alleges that Respondent allegedly conducted FAP trafficking;
- The United States Department of Agriculture ("USDA") conducted an investigation at [REDACTED] regarding food trafficking and determined that [REDACTED] was engaged in food trafficking and ultimately led to [REDACTED] permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- The USDA in its OIG determined that [REDACTED] based upon a pattern of transactions where multiple transactions were completed in an unusually

short time and a series of transactions were excessively large purchases were made; Exhibit 1 pp. 10. USDA issued a permanent disqualification of Liquor King on May 4, 2010

- Respondent had high dollar transactions at [REDACTED] alleging they were consistent with traditional trafficking patterns/scheme taking place at the business; and
- thus, Respondent trafficked FAP benefits.

The Department did present evidence of a permanent disqualification determination of [REDACTED] by the USDA dated [REDACTED]. Exhibit 1, pp. 13-14. The Department also presented pictures offered to demonstrate a description of [REDACTED] layout, lack of fresh food and that its inventory of FAP eligible items were limited. Exhibit 1, pp. 15-22. The Department also used the Respondent's EBT FAP transaction history to establish that the Respondent trafficked her FAP benefits at [REDACTED]. The Department determined that all transaction of \$30 or more were trafficking transactions and that some transactions occurred within minutes of each other. The evidence demonstrated only one transaction (\$98.69) which was higher than the rest and which resulted in Respondents FAP EBT Account balance being zero. See exhibit 1 pp. 23-24. During the fraud period the evidence demonstrated 6 transactions which were slightly under \$30 ([REDACTED]; \$29.07) and other transactions over \$30 dollars ([REDACTED]; \$42.78, [REDACTED]; \$38.90). The pictures of the store and its merchandise were not persuasive to establish that the stock carried was insufficient to support transactions in these amounts.

Based upon the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits.

The pictures presented by the Department showed food product that are intended for consumption. See Exhibit 1, pp. 13-22. Based on this information, it can be inferred that Respondent could purchase legitimate transactions based on the evidence submitted. See Exhibit 1, pp. 13-22.

The Department's main argument was based on Respondent's FAP transactions. The Department contended that Respondent's transaction of \$98 (referenced above) and a series of 6 transactions for around \$30 or more is consistent with traditional trafficking patterns and/or the scheme taking place at the business and that the FNS report concludes that EBT purchases in excess of \$30 are unreasonable for a store of this type. See OIG report, Exhibit 1, p. 3. However, both of these categories of transactions are not persuasive to conclude that the Respondent is involved in trafficking and are not demonstrated by the evidence of Respondent's purchases. 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). As stated previously, the Liquor King had purchasable foods item and it is reasonable to conclude

that Respondent could purchase items at the [REDACTED] using her EBT card. As such, the evidence presented does not establish by clear and convincing evidence that Respondent trafficked her 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, p. 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, the Respondent is not subject to a disqualification under the FAP program. BAM 720, p.8

Overissuance

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

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

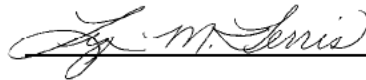
In this case, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive an OI of program benefits in the amount of \$446.45 for the period of [REDACTED] in FAP benefits.

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 \$446.45 from the FAP benefit program.

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



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/30/2015**

Date Mailed: **7/30/2015**

LMF / hw

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:

