

**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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Reg. No.: 15-008546
Issue No.: 3005
Case No.: ██████████
Hearing Date: August 06, 2015
County: WAYNE-DISTRICT 17

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on August 6, 2015 from Detroit, Michigan. The Department was represented by ██████████, 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

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 June 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. The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2012 through April 30, 2013.
5. During the fraud period, Respondent allegedly trafficked [REDACTED] in benefits by the State of Michigan.
6. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
7. This was Respondent's first alleged IPV.
8. 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 (formerly 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 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-.3011.

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

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 their reporting responsibilities.

BAM 700 (2011), p. 6; 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.

The federal Food Stamp regulations read in part:

(c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed 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). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the

household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2012), p. 10.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. BAM 720, p. 13. 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 concurrent receipt of benefits. BAM 720, p. 13.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, or intentionally committed an act known to be trafficking, with regard to the FAP program. The Department must not only prove that the Respondent committed an act, but that there was intent to commit the act.

In the current case, the Administrative Law Judge is convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent intentionally trafficked their FAP benefits, with regard to benefits spent at the [REDACTED].

The burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent more than likely trafficked or that there was FAP trafficking occurring at the store in question. The Department must prove in a clear and convincing manner that Respondent trafficked their benefits.

In other words, the Department must show through clear and convincing evidence that Respondent committed an act that would constitute trafficking.

The Department has met their burden of proof in the current case.

First, the undersigned must note that while the store owner in question has been found responsible for FAP trafficking at this point in time, the store is not the subject of this administrative hearing; the Respondent is the subject, and the bad actions of one party cannot be used to infer guilt on a separate, distinct, party.

That being said, the Department has presented evidence that not only raises the specter of trafficking, but also leaves little room for alternative explanations.

Normally, the undersigned would be reluctant to find trafficking if the only evidence was that of high dollar amounts spent at the store, without some sort of report attached to the case packet showing that the store could only support transactions under a certain amount.

However, the Department has also shown that both of the stores in question had limited food stock that was entirely limited to low dollar values. Mathematically speaking, high dollar purchases would have to mean purchases of dozens of items. This is complicated by the fact that the stores in question had bullet-proof glass and turntables installed that would complicate the purchasing process, necessarily limiting the ringing up of items to a few at a time. This does not mean that high dollar value purchases were impossible at the stores in question, but that the time necessary to complete a high dollar purchase was not insignificant. Making several high value purchases within the confines of a few minutes, much less under a minute, would be impossible, given the nature of the store.

However, the Respondent in question had multiple high-dollar value purchases made within relatively short time frames—sometimes within the same minute. Absent changes in some fundamental laws of physics, the Administrative Law Judge can only conclude that the purchase history presented was impossible without trafficking of benefits. There is simply no legitimate way that the Respondent could have made the purchases indicated in their transaction history at the times, locations, and dollar amounts indicated. As such, the Administrative Law Judge holds that the Respondent did engage in the trafficking of their FAP benefits.

Furthermore, as the types of trafficking engaged in at the store were determined to be the exchanging of benefits for cash or the purchase of clearly unauthorized goods, the undersigned holds that the trafficking in this case was intentional.

With regard to the amount of trafficking, the Department has submitted transaction histories flagged as likely trafficking; these figures were not objected to, and there is no evidence that the figures are invalid. Once a determination of trafficking has been made, the Respondent has the burden of proof in showing that the submitted Department figures are incorrect, and no objections to these figures were made.

Therefore the undersigned holds that the benefits sought to be recouped in this case with regards to trafficking at this store, [REDACTED], were used for trafficking, per a lack of objection to the Department's trafficking calculations. As such, the recoupment requested in this case is affirmed with regard to that amount.

However, the Department also requested recoupment with regards to benefits allegedly spent by a third party at a warehouse store; the Department alleged that Respondent sold her EBT card to the third party in exchange for cash, and the card was used by this third party. However, the undersigned does not feel that the Department has proven this chain of events through clear and convincing evidence.

The Department presented Respondent's EBT card transaction history showing that the card had been used at a warehouse store. However, the Department has failed to present sufficient evidence that shows that the card was used by somebody other than the Respondent.

While the Department did present what appears to be a spreadsheet showing the dates and times a third party shopped at a warehouse store and used the EBT card in question, this was a spreadsheet without any marking or any showing as to who created it. It is not authenticated, or supported by any supplemental evidence. No documentation was provided to show that the numbers presented in the spreadsheet had any basis in reality. This evidence lacks a foundation, and without a foundation, the evidence must be given zero weight. Without weight, the undersigned cannot consider it, and as such, must say that the Department has failed to present evidence that the individual in question bought Respondent's card and used it.

The only fact that the evidence presented conclusively shows is that Respondent's card was used at a warehouse store. It does not show who used said card, or what warehouse account it was used under. Without these critical underlying facts, the undersigned must hold that the Department has failed to support the very basis of their allegations, and as such, the allegation must fail. As such, the undersigned declines to find recoupment for the amount allegedly used at the warehouse store for the third party, [REDACTED].

However, the Department has shown an IPV with regard to the other transactions regarding the [REDACTED]. The Department has shown that Respondent has no previous IPV's; as this is the Respondent's first IPV finding, the

