

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-001317
Issue No.: 3005
Agency Case No.: [REDACTED]
Hearing Date: October 28, 2015
County: ANTRIM

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 October 28, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear at the hearing and it was held in the 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

Whether the Respondent engaged in trafficking Food Assistance Program (FAP) benefits in the amount of [REDACTED]?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- (1) The Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) The Respondent was issued an Electronic Benefit Transfer (EBT) card which is accompanied by an informational brochure explaining the conditions that constitute fraud/IPV and trafficking and the potential consequences.
- (3) In January, 2013, a USDA-OIG investigation determined that the [REDACTED] and [REDACTED] was trafficking Food Assistance Program (FAP) benefits. The investigation revealed that store employees were allowing food stamp recipients to purchase ineligible items with their bridge EBT card; specifically synthetic drugs, cigarettes and alcohol. The determination was based on under cover transactions as well as several employees' confessions of their

involvement in the scheme. Customers were charged \$37.99 to purchase the synthetic drugs.

- (4) Between November 1, 2011 and November 30, 2011, the Respondent's EBT card was used for transactions at the [REDACTED]. One purchase made there was for [REDACTED] and another purchase was made there for [REDACTED].
- (5) This was the Respondent's first alleged IPV.
- (6) A notice of hearing was mailed to the Respondent at the last known address and was returned by the US Post Office as undeliverable.
- (7) On February 5, 2015, the Office of Inspector General submitted the agency request for hearing of this case.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACR 400.3001-3015.

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 \$1000 or more, or
 - the total amount is less than \$1000, 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.

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 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. Trafficking is defined as, "A person who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act of 1977, 7. U.S.C. 2011 to 2030 is guilty of the crime of Food Assistance Program (FAP) trafficking (MCL 750.300a, BEM 203, 7 U.S.C. 2016).

In this case, the Respondent made one purchase for [REDACTED] and then did make another purchase for three items at [REDACTED], totaling [REDACTED]. Based on the USDA OIG investigation and on the record as a whole, this Administrative Law Judge concludes that the Department has met its burden of proving, by a clear and convincing standard, that the Respondent knowingly purchased items unauthorized by the Food Stamp Act. As such, this Administrative Law Judge concludes that the Respondent has committed his first IPV.

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.12. 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.12. 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.13.

In this case, the Administrative Law Judge has concluded that the Respondent has committed his first IPV. As such, the Administrative Law Judge concludes that the appropriate disqualification period to be imposed is one year.

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 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.

In this case, the Department has met its burden of proving that the Respondent received an OI of the FAP in the amount of [REDACTED] that the Department is entitled to recoup/collect.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that the Department has established by clear and convincing evidence that the Respondent committed an IPV. The Department is **ORDERED** to initiate recoupment/collection procedures and to impose a disqualification period in accordance with departmental policy.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **11/2/2015**

SEH/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

