

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

IN THE MATTER OF:

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Reg. No.: 15-001060
Issue No.: 3005
Case No.: ██████████
Hearing Date: April 8, 2015
County: WAYNE-DISTRICT 19
(INKSTER)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of 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 April 8, 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 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 January 29, 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 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 had no 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, 2013 to May 31, 2014 (fraud period).
7. The Department alleges that Respondent trafficked ██████████ in FAP benefits.
8. This was Respondent's first alleged IPV.
9. 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 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 Stamp Act of 1977, 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.

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 (October 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 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 (July 2013), pp. 2-3.

The Department's argument against Respondent for trafficking FAP benefits is as follows:

- there exists a food store (hereinafter referred to as "Store "), where the United States Department of Agriculture ("USDA") conducted an investigation at the Store regarding food trafficking and determined that the Store was engaged in food trafficking and ultimately led to the Store's permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP);
- Store had Electronic Benefit Transfer (EBT) transactions of FAP benefits which averaged a higher amount in transactions than similar stores in the same size and area;
- Store has a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food;
- over a period of time, Respondent had high dollar and closely related transactions at the Store which is consistent with traditional trafficking patterns; and
- thus, Respondent trafficked FAP benefits.

First, the Department presented evidence from the USDA that the Store engaged in FAP trafficking, which resulted in the Store's permanent disqualification from SNAP on June 19, 2014. See Exhibit 1, pp. 15-16; see also USDA letter dated May 7, 2014, pp. 12-14.

Second, the Department argued that the Store had a limited supply of food and counter space where it is unlikely that someone would make regular and/or large purchases of food. See Exhibit 1, p. 4. Also, the Department presented pictures in an attempt to demonstrate the above description of the Store's layout. See Exhibit 1, pp. 21-30.

Third, to establish that Respondent trafficked her FAP benefits at the Store, the Department relied on Respondent's FAP transaction history. See Exhibit 1, pp. 53-56. For example, Respondent had a large purchase in the amount of \$ [REDACTED] on October 3, 2013. See Exhibit 1, p. 54. Also, Respondent completed four transactions on April 3, 2014, within hours of each other. See Exhibit 1, pp. 55.

Fourth, Respondent signed an affidavit on January 27, 2015, in which the OIG agent wrote a statement on behalf of the Respondent because she cannot spell or write. The affidavit indicated that Respondent admitted to fraudulently using her EBT card. See Exhibit 1, p. 57. In fact, the OIG agent testified that Respondent informed her that she admitted to using her EBT card inappropriately. See Exhibit 1, p. 4.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV involving her FAP benefits.

First, this Administrative Law Judge (ALJ) would not find an IPV present only based on the affidavit presented by the Department. See Exhibit 1, p. 57. If the Respondent cannot spell or write, then it comes into question as to whether Respondent would be able to understand what the affidavit stated. It should also be noted Respondent's admission to the trafficking is an appropriate consideration in determining whether trafficking occurred. Respondent's statement was given directly to the testifying agent who credibly testified concerning the statement. Respondent's statement is not hearsay because it was an admission by party opponent (Michigan Rules of Evidence 801(d)(2)); for good measure, the statement also meets a hearsay exception a statement against interest by an unavailable declarant (Michigan Rules of Evidence 804 (b)(3)).

Nevertheless, the Department's main argument was based on her FAP transaction history, which presented persuasive evidence that Respondent committed an IPV involving her FAP benefits. As shown above, the Department did present several transactions that were suspicious on April 3, 2014 and May 5, 2014. On these dates, Respondent conducted several transactions throughout the day, which resulted in a high dollar amount. See Exhibit 1, p. 55. For example, Respondent made four separate purchases on April 3, 2014, which resulted in a total transaction amount of [REDACTED]. See Exhibit 1, p. 55. This is highly suspicious that Respondent made multiple purchases throughout the day, which resulted in high dollar transactions within a short period of time. As such, this shows by clear and convincing evidence that the Respondent is involved in trafficking. It should be noted that the Department included two transactions as part of the IPV period on September 3, 2013 ([REDACTED]) and October 3, 2013 ([REDACTED]). See Exhibit 1, p. 54. However, this ALJ does find that these two

transactions amount to trafficking by clear and convincing evidence (i.e., conducted on different dates, were a month apart, and were different amounts (not even amounts)). See Exhibit 1, p. 54.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

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.

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

As stated in the analysis above, the Department has established that Respondent committed an IPV involving her FAP benefits. Thus, it is found that Respondent received an OI of program benefits in the amount of ██████ from the FAP program. See BAM 720, p. 8. It should be noted that the OI amount was reduced by ██████ as this ALJ did not find trafficking for the transactions conducted on September 3, 2013 and October 3, 2013. See Exhibit 1, p. 54.

