

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002097
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 30, 2015
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Gary Heisler

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on April 30, 2015. Respondent appeared and testified. Participants on behalf of the Department of Human Services (Department) included RA [REDACTED]

ISSUE

Whether 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) Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. Respondent was issued the "How To Use Your Michigan Bridge Card" booklet at the same time as they were issued their Electronic Benefit Transfer Card. The booklet provided Respondent with notice of the Food Assistance Program rules and consequences for breaking those rules.
- (2) In May 2014, a USDA-FNS investigation determined that the [REDACTED] was trafficking Food Assistance Program (FAP) benefits. The determination was based on analysis of the store's Electronic Benefit Transfer (EBT) card transactions, the inventory and mix of authorized items carried at the store, and the transaction records of similar stores in the same geographic area as the store.
- (3) Between July 13, 2012 and February 13, 2014 Respondent's Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card was used for transactions at the [REDACTED]. The timing and amount of Respondent's transactions were in a pattern and manner which does not reflect normal purchases for the

inventory and mix of authorized items carried at the [REDACTED]. The total of Respondent's trafficking transactions is \$ [REDACTED].

- (4) On February 20, 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 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 .3011.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of Food Assistance Program (FAP) trafficking and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

DEFINITIONS

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

OVER-ISSUANCE AMOUNT

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.

OIG RESPONSIBILITIES

All Programs

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.

DISQUALIFICATION

FIP, SDA, AND FAP

Disqualify an active **or** inactive recipient who:

Is found by a court or hearing decision to have committed IPV, **or**

Has signed a DHS-826 or DHS-830, **or**

Is convicted of concurrent receipt of assistance by a court, **or**

For FAP, is found by SOAHR or a court to have trafficked FAP 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.

Standard Disqualification Periods FIP, SDA, and FAP

The standard disqualification period is used in all instances except when a **court** orders a different period (see Non-Standard Disqualification Periods in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV.

During this hearing, Respondent testified that he has never been in the [REDACTED] and did not conduct any of the transactions at issue. Respondent stated: he is disabled; he had others use his EBT card to get groceries for him; and since he is disabled, letting other use his card is allowed. Respondent asserts he is not responsible for the alleged trafficking transactions.

When asked, Respondent stated he had not designated anyone as an authorized user of his EBT with the Department. Respondent's assertion that he can allow others to use his card is correct. However, an authorized use must be designated in order to invoke that ability. In this case Respondent did not designate an authorized user so allowing someone else to use his EBT card is a violation of the Food Assistance Program rules. Respondent was issued the "How To Use Your Michigan Bridge Card" booklet at the same time he was issued his Electronic Benefit Transfer Card. At page 2, the booklet says "Do not let others use your card. Your benefits will not be replaced if someone else uses them." At page 3, the booklet says "Do not let anyone use your card and PIN." Page 11 of the booklet describes use of an authorized representative and states:

You may choose a person, called an authorized representative (AR), to use your food benefits to purchase food for your household.

If you have an AR for your food benefits:

- You will receive a Bridge card to give to your AR.
- You will need to call Customer Service to obtain a PIN for the AR card, just like you do for your own card.

If you need an AR, **choose a person you trust**. Remember, lost or stolen benefits will not be replaced.

If your AR performs fraudulent activity involving your account, it may result in criminal charges against you and your benefits may be reduced or stopped. For more information, call your local Department of Human Services office.

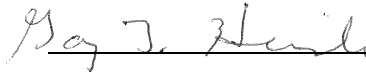
Respondent is responsible for all transactions of his EBT card.

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, finds that the Department has established by clear and convincing evidence that Respondent engaged in Food

Assistance Program (FAP) trafficking in the amount of \$ [REDACTED] which the Department is entitled to recoup. This is Respondent's 1st Food Assistance Program (FAP) Intentional Program Violation (IPV) and the Department may disqualify Respondent in accordance with Department of Human Services Bridges Administration Manual (BAM) 720.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/19/2015**

Date Mailed: **5/19/2015**

GH/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:

