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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-5613
Issue No.: 3055
Case No.: [redacted]
Hearing Date: May 14, 2013
County: Oakland-03 County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on May 14, 2013 from Lansing, Michigan. The Department was represented by [redacted] 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 400.3187(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 commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving 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 October 16, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG ☒ has ☐ has not requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP benefits from July 1, 2010 through December 30, 2010.

4. Between July 1, 2010 and December 30, 2010, the Claimant had multiple transactions at [redacted]

5. On or around June 4, 2011, the United States Department of Agriculture (USDA) visited the [redacted] for an on-site evaluation/investigation.

6. In October of 2011, the USDA completed their investigation regarding [redacted] and disqualified the store from the Supplemental Nutrition Assistance Program (SNAP). The USDA disqualified [redacted] for failing to submit sufficient evidence to demonstrate that their firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

7. The Department's OIG indicates that the time period they are considering the fraud period is July 1, 2010 through December 31, 2010.

8. During the alleged fraud period, Respondent was issued $[redacted] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC benefits from the State of Michigan.

9. During the alleged fraud period, the Respondent had $[redacted] in transactions at Regal Towers Convenience Store that exceeded $[redacted]

10. The Department has not established that Respondent committed an IPV.

11. A notice of disqualification hearing was mailed to Respondent at the last known address and ☐ was ☒ was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The 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 1999 AC, Rule 400.3001 through Rule 400.3015.

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

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.

IPV is suspected when there is **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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. 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.

The length of the disqualification period depends on the dollar amount of the FAP benefits trafficked. A person is disqualified for life for a FAP trafficking conviction of $500 or more. The standard IPV disqualification period is applied to FAP trafficking convictions less than $500. BEM 203, p. 3.

Testimony and other evidence must be weighed and considered according to its reasonableness.[1] Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine.[2] In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter.[3]

Having reviewed the evidence and testimony provided, I cannot find the Department to have met their burden in establishing by clear and convincing evidence that the Respondent trafficked FAP benefits. The evidence may show that FAP benefits were

[1] *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007).
[2] *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).
[3] *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

likely to have been trafficked, but this is not enough to meet the burden of clear and convincing.

The Department provided an investigative report from the USDA that indicates the first and apparently only onsite visit took place on June 4, 2011. The visit occurred after every transaction in question had already taken place. Additionally, the fact that some transactions were identified as being legitimate transactions while only those that exceeded $[redacted] dollars were indicative of FAP trafficking was a bit troubling. The rational as to how the $[redacted] amount was calculated was not very convincing. While one party may have indicated during an interview that when they trafficked FAP benefits, their transactions exceeded $[redacted] does not necessarily mean that every transaction then exceeding $[redacted] is a case of FAP trafficking. Furthermore, the inventory checklist presented by the USDA does indicate a number of items that when combined together or purchased in whole could exceed $[redacted] (albeit the inventory was taken after each of the transactions in question).

Even if all of the information provided is combined and looked at as a whole, I do not find the evidence to meet the clear and convincing standard. Therefore, I am dismissing this matter as the Department has failed to meet their burden of proof in establishing an IPV in this matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, cannot determine by clear and convincing evidence that the respondent has committed an intentional program violation of the FAP program.

Accordingly, this matter is **DISMISSED** without prejudice.

Corey A. Arendt
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 15, 2013

Date Mailed: May 15, 2013

NOTICE: The law pr ovides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court fo r the county in which he/she lives.

CAA/las

cc: [redacted]