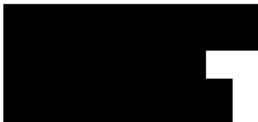


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 20135095
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: April 11, 2013
County: Iosco County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 April 11, 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 Food Assistance Program (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 8, 2012 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 during the period of April 1, 2011 through April 30, 2011.
4. Respondent had no apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period they are considering the fraud period is April 1, 2011 through April 30, 2011.
6. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
7. Respondent was entitled to \$0 in FAP during this time period.
8. Respondent did receive an OI in the amount of \$ [REDACTED] under the FAP program.
9. The Department has established that Respondent committed an IPV.
10. This was Respondent's first IPV.
11. A notice of disqualification hearing was mailed to Respondent at the last known address and was 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 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 1999 AC, Rule 400.3001 through Rule 400.3015.

BAM 700 and BAM 720 govern Intentional Program Violations (IPVs). Generally speaking, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720.

According to BAM 720, "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.

An 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.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700. A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 203. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203.

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

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

- FAP trafficking OIs 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 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.

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) 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. BAM 720. This can be established through circumstantial evidence. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720. If the court does not address disqualification in its order, the standard period applies. BAM 720.

Here, the Department contends that in July, 2011, [REDACTED], the owner of [REDACTED] was charged with FAP trafficking by the USDA Food and Nutrition Service (FNS). According to the Department, the store processed numerous transactions indicative of fraud, including “excessively large” purchase transactions for a store of its size and inventory with multiple transactions in an unusually short time period. Following the investigation, the Department asserts that the [REDACTED] was permanently disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) or FAP. The Department then alleges that subsequent investigation revealed that Respondent’s name appeared in the EBT Bridge Card purchase history from the [REDACTED] during this time period. On March 16, 2012, an OIG agent investigating the Bay Party Store, reportedly spoke with Respondent who stated that he did not remember making any purchases at the [REDACTED], but that he would be willing to sign and return repayment documents.

Testimony and other evidence must be weighed and considered according to its reasonableness. *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). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep’t of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). 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. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

The Administrative Law Judge has reviewed all of the evidence in this case. The evidence consists of USDA investigation documents and photographs which reveal that the [REDACTED], during the period of time in question, was predominately a liquor store with some convenience food items such as chips, cookies, candy, ice cream novelty, soda/energy drinks and other snack items. However, the store did not have any fresh meats or produce. The Department also provided an EBT card usage history which indicated that Respondent, on April 3, 2011, used his EBT card to make a \$ [REDACTED] transaction at the [REDACTED]. The Bay Party Store did not carry an inventory of eligible food items during this time period.

The clear and convincing evidence shows that Respondent knowingly used, transferred, acquired, purchased, or presented his EBT card for purposes other than for eligible food. Accordingly, this Administrative Law Judge finds that Respondent was engaged in trafficking of his FAP benefits. Respondent's signature on the Assistance Application in this record certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting responsibilities.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a \$ [REDACTED] overissuance from April 1, 2011 through April 30, 2011. This is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that:

1. Respondent did commit an IPV.
2. Respondent did receive an overissuance of program benefits in the amount of \$ [REDACTED] from FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 12, 2013

Date Mailed: April 16, 2013

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

CAP/cr

cc:

