

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201354187
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: August 22, 2013
County: Genesee (06)

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 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on August 22, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Charlie Durrett (Respondent).

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) benefits?

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 June 28, 2013 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 March 1, 2010 through May 31, 2011.
4. Respondent was aware that buying or selling of FAP benefits for cash or consideration other than eligible food was unlawful.
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 they are considering the fraud period is March 1, 2010 through May 31, 2011.
7. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
8. Respondent was entitled to [REDACTED] in FAP benefits during this time period.
9. Respondent did receive an OI in the amount of [REDACTED] under the FAP program.
10. The Department has established that Respondent committed an IPV.
11. This was Respondent's first IPV.
12. 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 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.

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2013).

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. See BAM 720.

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 (2013).

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

- benefit overissuances 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 [REDACTED] or more, or
- the total overissuance amount is less than [REDACTED], and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance, or
 - the alleged fraud is committed by a state/government employee.

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.

With regard to FAP cases only, an IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700.

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.

A disqualified recipient remains a member of an active group as long as he/she lives with them. BAM 720. Other eligible group members may continue to receive benefits. 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.

In the present case, the Department asserts that following a federal raid of the [REDACTED], it was determined that the store was involved in a FAP trafficking scheme. According to the Department, Respondent's Electronic Benefit Transfer (EBT) card usage history revealed numerous transactions demonstrating behavior indicative of FAP trafficking. Respondent acknowledged that he visited the [REDACTED] but he strongly denied any knowledge of any illegal activities at the store. Respondent stated that all of the transactions indicated by his EBT Card Usage History were legitimate purchases of "meat" at the store.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. There is no dispute that the [REDACTED] was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. The evidence showed that from September 2009

through July 2011 the [REDACTED] was a small grocery store with limited eligible food stock items that was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. The evidence also showed that the store did not have sufficient eligible food items to support high dollar transactions. The record contained a Rule 1 Plea Agreement showing that the owner of the [REDACTED] pled guilty to conspiring to commit felony food stamp fraud.

This Administrative Law Judge finds that Respondent's statements are not credible. The evidence is circumstantial, but nonetheless, persuasive. Respondent conducted several transactions at [REDACTED] which could not have been legitimate purchases of meat. The evidence, including the photographs of the store, show that the [REDACTED] did not carry enough meat in stock to reasonably explain Respondent's purchases at the store. On March 12, 2010, Respondent made a [REDACTED] purchase at the store. On April 10, 2010, Respondent made an even [REDACTED] transaction. On August 10, 2010, Respondent made a [REDACTED] purchase at the store. The EBT Card Usage History also records purchases of [REDACTED], [REDACTED] and [REDACTED] at [REDACTED]. Taken together, this evidence demonstrates Respondent was involved in FAP trafficking.

Respondent's signature on the Assistance Application in this record certifies that he was aware that fraudulent participation in FAP could result in criminal, civil or administrative claims. The Department has established that 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 total [REDACTED] overissuance. 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 OI of program benefits in the amount of [REDACTED] from the FAP program.

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.

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

Date Signed: 08/26/2013

Date Mailed: 08/28/2013

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/aca

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