

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201350424
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: August 13, 2013
County: Wayne (17)

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 13, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED] (Respondent) and [REDACTED] (Respondent's husband).

ISSUES

1. Did Respondent receive an over-issuance (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 6, 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 January 1, 2011 through December 30, 2011.
4. Respondent was aware that it is unlawful to knowingly use, transfer, acquire, or purchase a food stamp access device other than authorized by the Food Stamp Act of 1977, 7 U.S.C. §2011 to 2030.
5. Respondent had no apparent physical or mental impairment that would limit this understanding or ability.
6. The Department's OIG indicates that the time period they are considering the fraud period is January 1, 2011 through December 30, 2011.
7. During the alleged fraud period, Respondent was issued \$2,355.00 in FAP benefits from the State of Michigan.
8. Respondent was entitled to \$0.00 in FAP benefits during this time period.
9. Respondent did receive an OI in the amount of \$2,355.00 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.

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 (2013) 720.

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

- benefit over-issuances 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 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 IPVs 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.

Here, the Department, through the OIG Agent, contends that the [REDACTED] was involved in FAP trafficking and that Respondent was guilty of an IPV after she participated in approximately 27 unauthorized transactions at the store from January 2011 through December 2011. The OIG Agent testified that, based on Respondent's Electronic Benefit Transfer (EBT) card usage history reports, she made several purchases at the [REDACTED] during the fraud period that demonstrated she used her EBT card improperly. According to the OIG Agent, Respondent made frequent "high dollar" transactions at the [REDACTED], but as a small grocery store, the [REDACTED] was not equipped to provide enough goods to justify the amount of the transactions being conducted. The Department also maintains that Respondent made small amount purchases which demonstrate that she used her EBT History Card for hot prepared food items, which are ineligible for purchase using an EBT card. The Department further asserts that the transactions show Respondent purchased food on credit and then visited the store to repay the balance rather than to purchase food.

Respondent, on the other hand, denies any wrongdoing and states that she did, in fact, purchase food items from the store as reflected by the EBT History. Respondent further contends that the EBT History Reports reflect only that she regularly purchased foods in bulk for her family during the time period in question. Claimant also took exception to the photographs of the [REDACTED] contained in the Department's investigation report and stated that they did not reflect the condition of the store or the volume of goods at the store when she made her purchases.

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).

In the present case, this Administrative Law Judge finds the OIG Agent's testimony more credible than the Claimant's, and that the evidence shows 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 also shows that from January 2011 through January 2013, 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. This evidence further reveals that the [REDACTED] did not have sufficient eligible food items to support high dollar transactions and sold items ineligible for purchase when using an EBT card such as hot prepared food items like pizza or chicken wings. In fact, the [REDACTED] owner admitted that he participated in a FAP trafficking operation that allowed patrons to cash in their FAP benefits for money and then pay for goods at a later date.

The EBT History of FAP purchases made during the time period in question indicated that Respondent used her Michigan-issued EBT card at the [REDACTED] for high dollar transactions and on several occasions (many of which took place repeatedly on the same day). For instance, the EBT History showed that Respondent made purchases in the amounts of \$143.01, \$72.45 and \$94.84 in March 2011. The photographs of the [REDACTED] show that the store did not have the inventory for food purchases in this amount. Respondent's testimony that she purchased 40 pound bags of rice during this time period is not credible when compared to the evidence. The smaller dollar transactions, such as \$1.00, reveal that Respondent purchased ineligible hot prepared food items such as pizza and/or chicken at the [REDACTED]. The transactions also demonstrate the Respondent made unauthorized purchases of food on credit at the [REDACTED] during the fraud period. Respondent had no apparent physical or mental impairment that limits her understanding.

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 \$2,355.00 from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,355.00 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: August 14, 2013
Date Mailed: August 15, 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
cc: 