

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201429100
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 12, 2014
County: Berrien

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on June 12, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent personally appeared and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, 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 March 4, 2014 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 issued by the Department.
4. Respondent was not aware of the Department policy that provides an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified if both offenses occurred after August 22, 1996.
5. Respondent had no apparent physical or mental impairment at the time that would limit his understanding.
6. The Department's OIG indicates that the time periods it is considering the fraud periods are December 28, 2012 through November 30, 2013 and December 23, 2013 through January 31, 2014.
7. During the two alleged fraud periods, Respondent was issued [REDACTED] in FAP (December 28, 2012 through November 30, 2013) and was issued [REDACTED] in FAP benefits (December 23, 2013 through January 31, 2014) by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during these time periods.
8. The Department alleges that Respondent received OIs FAP benefits in the amount of [REDACTED] and [REDACTED] for a total OI of [REDACTED] for both periods.
9. This was Respondent's first alleged IPV.
10. 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3001 through R 400.3015.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (1-1-2014), p 36.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, or
 - the total OI 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 (8-1-2012), p. 10.

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 reporting responsibilities.

BAM 700 (12-1-2011), p. 6; BAM 720, p. 1.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

People convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. BEM 203, p 1 (10-1-2012). BEM 203 at page 2 provides that for FAP, “[a]n individual convicted of a felony for the use, possession, or distribution of controlled substances **two or more times** will be permanently disqualified if both offenses occurred after August 22, 1996.” (With emphasis added).

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).

Here, the Department's OIG Agent claims that Respondent has felony convictions involving drugs on March 30, 2005 and September 22, 2005. Specifically, the Department's OIG contends that Respondent is guilty of an IPV when he intentionally failed to report on his December 22, 2012 and December 23, 2013 online FAP applications that he had two drug-related felony convictions after August 22, 1996. Respondent, on the other hand, testified that he did not intentionally misrepresent anything as he believed that he only had 1 felony at the time.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

The record contains a copy of two online assistance applications completed and signed by Respondent on December 27, 2012 and December 23, 2013, respectively. The applications on pages 17 and 50 of the record ask the applicant to indicate "Yes" or "No" to the following question, "Convicted of a Drug Felony?" In response to this question on both applications Respondent answered "Yes." The applications do not specifically request the applicant indicate the number of felonies, the types of felony convictions, or the dates of the felony convictions. In fact, these applications did not ask Respondent to provide any other specific information in this regard. During the hearing, the Department's OIG Agent testified that Respondent was required to provide additional information concerning his felony convictions under the "Additional Information" section on pages 21 and 56 of the applications. However, these assistance applications did not specifically request Respondent provide any additional information concerning drug felony convictions in this section. The Department OIG Agent did not cite to any policy or other authority in support of this proposition. Had Respondent answered "No" to the question whether he had been "convicted of a drug felony", then he would have been untruthful. This Administrative Law Judge finds that Respondent did complete the application truthfully by answering that he did, in fact, have a felony conviction but there is no evidence that he was required to provide any additional written information concerning whether he had multiple convictions.

Respondent's testimony that he believed that he only had 1 felony conviction is credible based on the totality of the evidence. Further, as indicated above, there was no evidence that Respondent was specifically asked whether he had 2 or more felony convictions involving drugs after August 22, 1996. Respondent correctly and truthfully answered the only question presented in the application concerning felony drug convictions. The Department has not shown that Respondent intentionally misrepresented the number of felony drug convictions. Although the Department contends that Respondent failed to report that he had 2 felony convictions involving drugs, there is no evidence that he was ever asked to provide this information. Here, the

Administrative Law Judge also finds that Respondent was not aware that he had 2 separate felony convictions involving drugs and that he believed that he had only 1. Respondent's testimony was credible because he reasonably believed that he only had 1 conviction due to the fact that both convictions occurred within months of each other. In addition, this Administrative Law Judge finds that Respondent was not aware at the time that BEM 203 permanent disqualifies a person from FAP. Based on the clear and convincing evidence on the whole record, this Administrative Law Judge finds the Department has not established that Respondent intentionally failed to report information needed to make a correct benefits determination. The evidence also does not show that Respondent intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (8-1-2012), p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (10-1-2009), p. 2. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

Here, as indicated above, the Department has not shown that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent is not disqualified from FAP benefits.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

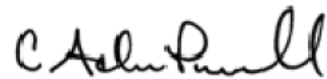
In this matter, the Department has shown that Respondent received an OI of FAP benefits. The record clearly shows that Respondent was not eligible for FAP during both periods as he did, in fact, have 2 or more drug felonies after August 22, 1996. Although the Administrative Law Judge finds that Respondent believed that he had only 1 felony drug conviction, the record clearly shows that he had 2 and that both occurred after August 22, 1996. During the time periods indicated above, Respondent received an OI of FAP. According to BAM 700, the Department may recoup this OI.

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, if any, concludes that:

1. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of [REDACTED].

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



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

Date Signed: 06/19/2014

Date Mailed: 06/19/2014

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/sw

cc:

