

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-34793
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 16, 2014
County: Wayne (17)

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 September 16, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] (an Arabic-English Interpreter from Linguistica International) provided language translation/interpretation services.

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 April 14, 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.
4. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern FAP benefits.
6. The Department's OIG indicates that the time period they are considering the fraud period is January 10, 2010 through July 30, 2012 (fraud period).
7. During the alleged fraud period, Respondent is alleged to have trafficked [REDACTED] in FAP benefits.¹
8. The Department alleges that Respondent received an OI of FAP benefits in the amount of [REDACTED].
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 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.

Intentional Program Violation

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.

¹ During the hearing, the Department's OIG Agent verbally requested that the alleged fraud amount be reduced from [REDACTED] to [REDACTED]. Respondent did not object. The Administrative Law Judge granted the request.

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 (10-1-2009).

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720 p 1 (10-1-2009). "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p 1 (10-1-2009). A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203, pp 2-3 (1-1-2009). 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, p 3.

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.

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 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.*

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV because he used his Michigan-issued Electronic Benefit Transfer (EBT) card during the alleged fraud period to make multiple high dollar purchases at a small grocery store found to be engaged in FAP trafficking. The Department's OIG Agent further alleges that Respondent purchased several items using his EBT card from the store on a credit basis, which is a violation of Department policy and federal law. Respondent, on the

other hand, denies the allegations and states that each of the transactions under his name was lawful and proper. Respondent further testified that any of the purchases he made at the store over [REDACTED] were legitimate purchases of rice, sugar, and similar items in bulk because Iraqi's have large families.

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. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In the present case, the record evidence shows that the [REDACTED] ("the store"), located at [REDACTED], [REDACTED], [REDACTED], was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. (Exhibit 1, pp. 10-13) This is supported by the United States Department of Agriculture (USDA) investigation report which indicated that the store was a small grocery store with limited eligible food stock items and was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. (Exhibit 1, pp. 12-13, 18-46) The USDA report also indicates that the store lacked sufficient eligible food items in its inventory to support high dollar transactions and sold ineligible hot prepared food items such as pizza, calzones, chicken wings and hot kabobs using EBT cards. (Exhibit 1, pp. 12-13) In addition, the record contained photographs of the store's interior which corroborated the USDA findings in the report. According to the record, the average transaction amount for similarly situated stores was between [REDACTED] and [REDACTED]. This evidence further showed that the store frequently engaged in high dollar transactions which were above the average for similar stores in the same general geographical area. (Exhibit 1, p. 46) The record evidence also demonstrated that the store's owner participated in a FAP trafficking operation that allowed patrons to purchase items on "credit tab" basis and then pay for items with an EBT card at a later date. (Exhibit 1, pp. 47-55)

With regard to the Department's claim that Respondent is guilty of FAP trafficking, the record evidence includes a copy an IG-312 EBT History of FAP purchases which details purchases made with Respondent's EBT card. (Exhibit 1, pp. 141-145) This record shows that Respondent engaged in the following transactions with his EBT card at a store known for FAP trafficking: 10/9/10 ([REDACTED]), 1/27/11 ([REDACTED]), 2/13/11 ([REDACTED]), 3/31/11 ([REDACTED]), 4/13/11 ([REDACTED]), 5/14/11 ([REDACTED]), 6/15/11 ([REDACTED]), 8/19/11 ([REDACTED]), 9/19/11 ([REDACTED]), and 10/17/11 ([REDACTED]). (See Exhibit 1, pp. 141-145).

These transactions are well above the [REDACTED] average transaction for items at similarly situated establishments. The photographs of the store revealed that there was an insufficient inventory of items in the store to support such high-dollar transactions. Respondent's testimony concerning his family size and his explanation that these transactions consist of legitimate purchases of rice, sugar, etc., is not persuasive. Based on the totality of the circumstances, including but not limited to the store size, the lack of inventory, transaction amounts, transaction history, and the absence of carts or bags, this Administrative Law Judge finds that the Department OIG Agent has established that Respondent engaged in FAP trafficking. The evidence is clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. Consequently, the Department OIG Agent has established that Respondent committed an IPV with respect to the FAP program.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (10-1-2009), 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. 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, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits. The Department has also shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

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.

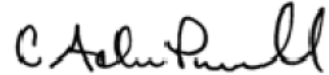
DECISION AND ORDER

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

1. Respondent did commit an IPV due to FAP trafficking.
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.

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



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

Date Signed: 09/19/2014

Date Mailed: 09/22/2014

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.

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