

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 14-002461
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 8, 2014
County: Wayne-District 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 July 8, 2014 from Lansing, Michigan. The Department was represented by ██████████ of the Office of Inspector General (OIG). Participants on behalf of Respondent included: ██████████ (Arabic-English Interpreter) and ██████████ (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 May 9, 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 1, 2010 through December 30, 2012 (fraud period).
7. During the alleged fraud period, Respondent is alleged to have trafficked [REDACTED] in FAP benefits.
8. The Department alleges that Respondent received an OI of FAP benefits in the amount of [REDACTED].
9. The Department alleges that this was Respondent's first 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. 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 (10-1-2009). 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.

For FAP cases, the Department will disqualify an active **or** inactive recipient who:

- Is found by a court or hearing decision to have committed IPV, **or**
- Has signed a Request for Waiver of Disqualification Hearing (DHS-826) or Disqualification Consent Agreement (DHS-830), **or**
- Is convicted of concurrent receipt of assistance by a court, **or**
- For FAP, is found by SOAHR (MAHS) or a court to have trafficked FAP 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.

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 she engaged in FAP trafficking at the [REDACTED] ("the store") located at [REDACTED]. Specifically, the OIG Agent alleges that the nature of Respondent's Electronic Benefit Transfer (EBT) FAP transaction history at the store is evidence of FAP trafficking during the alleged fraud period. The

OIG Agent claims that Respondent, during an interview, stated that she suffers from memory loss and cannot recall what she bought from the store. The OIG Agent further alleges that Respondent also engaged in a pattern of unauthorized credit transactions at the store using her EBT card. Respondent, on the other hand, stated that she has medical issues and does suffer from memory loss. Respondent testified that she visited the store with others who would assist her in carrying out the items she purchased. Respondent stated that she visited the store because they provided halal meat. She stated that she would often purchase items such as chicken, shrimp, and fish and that she would occasionally purchase an entire lamb at the store. Respondent stated that she had a large family and would occasionally make large 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).

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 store was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. This was based on the results of an investigation at the store conducted by agents from the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), Supplemental Nutrition Assistance Program (SNAP) This investigation revealed that the store had a food stamp trafficking operation that allowed permitted some customers to purchase hot prepared food items and/or turn in FAP benefits in exchange for cash. The store also allowed customers to pay for goods and pick them up at a later date. The evidence showed that the store was a small convenience 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. According to the record, the store was permanently disqualified from the SNAP program on January 7, 2013. The store 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.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Some of Respondent's history of EBT transactions at the store is suspicious, but they do not rise to the level required for clear and convincing evidence of an IPV. Simply because Respondent has made low dollar amount purchases at the store at times, it does not follow that these purchase are necessarily

trafficking. Similarly, Respondent's higher dollar amount transactions are consistent with her explanation that she would purchase large amounts of eligible items such as meat, fish, etc., for her large family. Although Respondent's testimony regarding how she would carry out the items from the store was less than clear, this possibly suspicious behavior does not constitute clear and convincing evidence of FAP trafficking. Simply because Respondent's Electronic Benefit Transfer (EBT) history of transactions during the period in question may also be suspicious, it does not follow that Respondent's (EBT) transaction history does not constitute clear and convincing evidence that she was engaged in FAP trafficking. The evidence does not show that Respondent either bought or sold FAP benefits for cash or consideration other than eligible food. The evidence is not clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. Similarly, the evidence is not clear and convincing that Respondent redeemed or presented for payment coupons known to be fraudulently obtained or transferred. This Administrative Law Judge finds that the Department's OIG Agent failed to establish with clear and convincing evidence that Respondent was guilty of FAP trafficking. Consequently, the OIG has failed to establish that Respondent committed an intentional program violation 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 she 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 not shown that Respondent was guilty of her first IPV concerning FAP benefits. Accordingly, the Department has also failed to establish that Respondent received an OI of FAP benefits. This Administrative Law Judge therefore concludes that the Department has not shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in an overissuance. Consequently, the Department's request for FAP program disqualification and request for restitution shall not be granted.

