

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

IN THE MATTER OF:

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

Reg. No.: 14-003185
Issue No.: 3005, 4005
Case No.: ██████████
Hearing Date: July 23, 2014
County: Wayne-District 35

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 July 23, 2014 from Lansing, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: ██████████ (Respondent) and ██████████ (Respondent's friend).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and State Disability Assistance (SDA) 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 May 28, 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 FAP benefits.
3. Respondent was a recipient of FAP and SDA benefits issued by the Department.
4. Respondent was not aware of the responsibility to report to the Department within 10 days that he had left the state of Michigan.
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 it is considering the fraud period is March 1, 2013 through October 31, 2013.
7. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. During the alleged fraud period, Respondent was issued [REDACTED] in SDA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED] and an OI in SDA benefits in the amount of [REDACTED]. The Department alleges that total OI for both FAP and SDA program benefits is [REDACTED].
10. This was Respondent's first alleged IPV relating to FAP.
11. 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 [REDACTED] or more, or
 - the total OI amount is less than [REDACTED], **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 (2-1-2013), 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 (2-1-2013), 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 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.

In the instant matter, the Department's OIG Agent seeks FAP disqualification as well as FAP and SDA benefits recoupment due to an alleged IPV. Specifically, the Department contends that Respondent intentionally failed to report that he had left the state of Michigan and continued to use his Michigan-issued FAP and SDA benefits in the state of New York during the fraud period. Respondent, on the other hand, denies that he acted intentionally. Respondent contends that he was homeless and was forced to stay

with a friend in New York. Respondent stated that he did not know he was required to report to the Department that he traveled to New York nor did he know that he was prohibited from using his Michigan EBT card in New York. Respondent also stated that he had health problems and was awaiting a decision on his disability application from the Social Security Administration. Respondent's friend (██████████) also testified that Respondent had medical problems, was homeless and was forced to live in New York, on a temporary basis.

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.

This Administrative Law Judge finds that Respondent's testimony that he did not act intentionally to be credible. (The undersigned also notes that Respondent appeared to have speech problems and was difficult to understand him during the hearing at times.) Respondent, due to his medical issues and evolving housing circumstances, was forced to relocate to New York until he was able to return to Michigan. Although Respondent was duly advised of his rights and responsibilities concerning FAP and SDA program benefits and that he signed the assistance application, this Administrative Law Judge does not find that Respondent intentionally left the state of Michigan for the very purpose of receiving FAP benefits and SDA benefits. Accordingly, this Administrative Law Judge finds that Respondent did not intentionally and fraudulently failed to report a change of address for the purpose of obtaining or continuing his FAP and SDA benefits. It should be noted that the issue whether or not Respondent had an apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting responsibilities was not clear on this record. Regardless; however, the clear and convincing evidence on the whole record shows that the Department has not established that Respondent intentionally failed to report information needed to make a correct benefits determination. Respondent's conduct simply did not rise to the level of an IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (2-1-2013), 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 not shown that Respondent was guilty of an IPV concerning FAP benefits. Therefore, Respondent shall not be disqualified from receiving 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. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (7-1-2013). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (7-1-2013). A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p 6 (7-1-2013).

In this matter, this Administrative Law Judge finds that the Department has shown that Respondent received an OI of FAP and SDA benefits due to a client error. Respondent failed to report to the Department that he had relocated to New York and continued to use his Michigan FAP benefits and incurred medical expenses during this time period. 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 and SDA program benefits in the amount of [REDACTED] ([REDACTED] for FAP and [REDACTED] for SDA).

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

It is FURTHER ORDERED that because Respondent has not committed an IPV, the Department shall delete from Bridges any FAP disqualification relating to the instant matter.



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

Date Signed: **7/25/2014**

Date Mailed: **7/25/2014**

CAP/sw

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

