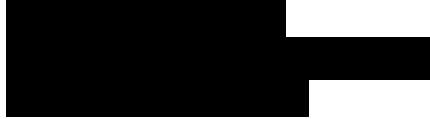


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-003521
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: August 19, 2014
County: Jackson

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 August 19, 2014, from Jackson, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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 30, 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 April 30, 2014 (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. 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. 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.

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.

The OI amount for trafficking-related IPV 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.

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 engaged in FAP trafficking during the alleged fraud period. Specifically, the Department's OIG Agent alleges that Respondent used [REDACTED] (a FAP group member) Michigan-issued Electronic Benefit Transfer (EBT) card to purchase bulk food items for Larry Pryor, who was the owner and operator of [REDACTED]. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

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.

It should be noted that the record in the instant case is the same as in [REDACTED], which is before the undersigned. In the present case, the record evidence shows that Respondent used [REDACTED] EBT card to make several large item/bulk purchases at Gordon Food Service (GFS). On February 16, 2014, [REDACTED]. [REDACTED] card was used to purchase large amounts of all beef franks, catfish fillets, kielbasa and ground beef patties. (Exhibit 1, p. 13). The evidence contains photographs of an African American male engaged in transactions at GFS on February 16, 2014. (Exhibit 1, p. 14). On June 12, 2013, [REDACTED] EBT card was again used to purchase bulk amounts of fries, chicken wings, tender fritters, beef steak, barbeque sauce and cayenne sauce. (Exhibit 1, p. 17). According to the receipts from a July 1, 2013 transaction, [REDACTED] EBT card was used to purchase large amounts of the following items: beef steak, beef franks, ground beef patties, six pepper blend, chili powder, meat tenderizer, Cajun seasoning, garlic powder and onion powder. (Exhibit 1, pp. 14-15). Later on that same day, [REDACTED] EBT card was used again at GFS to purchase: chili powder, meat tenderizer, Cajun seasoning, garlic powder, onion powder, paprika, taco seasoning, hamburger buns, hot dog buns and Dr. Pepper. (Exhibit 1, p. 16).

According to the investigation report, Respondent used [REDACTED] EBT card to purchase bulk items for [REDACTED] during the fraud period. The record shows that Respondent used Ms. King's EBT card to purchase for Mr. Pryor at GFS. The GFS cashier positively identified Respondent as the individual who made the purchases for [REDACTED]. (Exhibit 1, p. 3). The Department OIG Agent has established that Respondent was personally involved in the fraudulent use of [REDACTED] EBT card to make unlawful purchases for a third party. This supported by the photographic record evidence which revealed that Respondent used [REDACTED] EBT card make unlawful bulk purchases for [REDACTED] during the fraud period. The frequency of the transactions and the amount of items purchased show that the transactions were the result of 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. Respondent also redeemed or presented for payment coupons known to be fraudulently obtained or transferred. 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 or 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 shown that Respondent was guilty of his first IPV concerning FAP benefits. The Department has previously shown that [REDACTED] was responsible for a [REDACTED] OI in trafficked FAP benefits. The Department may not collect [REDACTED] from [REDACTED] and then again collect this amount from Respondent. According to BAM 700, the Department may recoup this OI from [REDACTED] only and may not recoup this amount from Respondent.

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, but that the [REDACTED] OI must be sought from [REDACTED]. 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 **NOT** receive an OI of FAP benefits in the amount of [REDACTED].

The Department is ORDERED to delete the OI and cease any recoupment action.

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: **9/4/2014**

Date Mailed: **9/4/2014**

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:

