

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

IN THE MATTER OF:

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

Reg. No.: 14-004395
Issue No.: 3005
Case No.: ██████████
Hearing Date: August 6, 2014
County: Muskegon

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 6, 2014 from Lansing, Michigan. The Department was represented by ██████████, 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 June 19, 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 aware of the responsibility to properly report to the Department any changes in household circumstances including changes in household group composition and changes in household income.
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 January 1, 2012 through November 30, 2012.
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. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. This was Respondent's first alleged FAP 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 (12-1-2011), 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.

Here, the Department OIG Agent alleges that Respondent committed an IPV when she misrepresented to the Department that she and her husband had divorced and that he was no longer a member of her household FAP group. The Department OIG Agent further alleges that Respondent failed to timely and properly report to the Department that her husband had received SSI benefits between November 2011 and November 2012 and that she did so in order to receive an OI of FAP benefits. Respondent, on the other hand, states that she and her husband had marital difficulties and that he moved out of the home for a few months in 2011. Respondent then testified that her husband returned to the home and they attempted to reconcile. Respondent reported that she left voicemail messages with her caseworker about the events in her home during the time period between September and October 2011, but that the caseworker did not return the messages. Respondent said that she and her husband are still married but that they live in separate sides of the house. Respondent contends that she only reported to the Department that she and her husband had separated, rather than divorced.

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.

The Department OIG Agent, in his hearing summary, indicates that Respondent is guilty of an IPV due to her "failure to report that her spouse Mark Morrow was receiving SSI benefits between November 2011 and November 2012." The hearing summary also provides that Respondent "reported on DHS-1010 completed and signed on November 28, 2011 that her ex-husband was moving into the home on December 10, 2011." The salient issue here is whether Respondent falsely reported to the Department that she and her husband had divorced for purposes of obtaining an OI of FAP benefits. If Respondent fraudulently reported that she and her husband had divorced and that he was no longer a proper FAP group member, then she would be guilty of an IPV.

The record evidence shows that Respondent completed a redetermination (DHS-1010) form on or about November 28, 2011. (Exhibit 1, pp. 12-15). The redetermination form asked Respondent to provide the names of people living with her in the household and Respondent did not include her husband Mark Morrow. (Exhibit 1, p. 13). Respondent also did not include Mr. Morrow as a source of income in the household at the time. (Exhibit 1, p. 13). Under the redetermination "client comments" section, Respondent indicated the following, "I don't have an [sic] bills in my name bad credit my ex has them in his name for me with my grandchildren living with me what ever. I can get help for it's a blessing I am having my ex husband move in to the back room. I need help with bills and my medical bills. I need to pay he will be moving in Dec 10th 2011 I will call you asap thank you for helping." (Exhibit 1, p 15).

The record also contains an Assistance Application (DHS-1171) seeking FAP benefits signed by [REDACTED] on October 25, 2012. (Exhibit 1, pp. 16-35.) The DHS-1171 contains a disclosure that [REDACTED] received SSI income. (Exhibit 1, p. 31). The record also contains the Department's Front End Eligibility (FEE) Investigation report dated November 8, 2012 which showed that Respondent and her husband were still married and could not afford a divorce. (Exhibit 1, p 36). According to the FEE report, Respondent stated that her husband moved back into the home on or about October 25th.

The record does show that Respondent clearly referred to Mark as her “ex husband” on the redetermination form. There is nothing in the record where Respondent specifically uses the word divorce or divorced. The Department OIG Agent argues that this implies that Respondent and her husband were divorced. This is a matter of semantics. This Administrative Law Judge finds that Respondent’s intention was to communicate to the Department that she and her husband were separated, but she did not necessarily imply that they were, in fact, divorced. This Administrative Law Judge finds that the clear and convincing evidence on the whole record does not show that Respondent committed an IPV because she did not intentionally give incomplete or inaccurate information needed to make a correct benefit determination. Accordingly, this Administrative Law Judge further finds that the OIG failed to establish with clear and convincing evidence that Respondent acted willfully and intentionally for the purposes of obtaining an OI of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (12-1-2011), 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, because the Department has not shown that Respondent was guilty of her first IPV concerning FAP benefits, Respondent shall **not** be personally disqualified from receiving FAP benefits for a period of 1 year.

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 (12-1-2011). 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 (12-1-2011). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (12-1-2011).

In this matter, the Department has shown that Respondent received an OI of FAP benefits. The OI was due to a client error because she failed to properly report her FAP group composition and proper income to the Department. The amount of the OI in FAP benefits was [REDACTED]. According to BAM 700, the Department may recoup this OI.

