

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-005436
Issue No.: 3005
Case No.: ██████████
Hearing Date: August 19, 2014
County: Jackson

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 August 19, 2014 from Lansing, Michigan. The Department was represented by ██████████ 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 400.3187(5).

ISSUES

1. Did Respondent commit an Intentional Program Violation (IPV)?
2. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
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 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, 2009 through June 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 (1-1-2009).

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720 p 1 (1-1-2009). "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p 1 (1-1-2009). 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.

With regard to FAP cases only, an IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700.

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 IPVs 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, on November 1, 2013, her Electronic Benefit Transfer (EBT) card was used at [REDACTED] in Lansing, Michigan and then, 10 minutes later was used at the "[REDACTED] [REDACTED]" in Jackson, Michigan. The Department's OIG Agent further contends that Respondent engaged in a pattern of suspicious transactions at the Take Out Party Store during the fraud period that was indicative of FAP trafficking. 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.

In the present case, the record evidence shows that Respondent's EBT card was used on November 1, 2013 at [REDACTED] located at [REDACTED], [REDACTED] at [REDACTED] and [REDACTED] (Exhibit 1, p. 75). The record also shows that on that same date at [REDACTED], Respondent's EBT card was used at the [REDACTED] located at [REDACTED] in [REDACTED]. (Exhibit 1, p. 75). Respondent's IG-311 EBT transaction history reveals that the [REDACTED] transaction was designated by a "K" which means it was keyed in, while the [REDACTED] transaction was indicated by an "S" which means it was swiped. (Exhibit 1, p. 75). Due to the fact that these two transactions took place within minutes of each other and Respondent was the only adult group member authorized to use the EBT card, this is strongly suggestive of trafficking. In addition, the fact that Respondent's card was keyed at the Take Out Party Store is evidence of trafficking. Based on the circumstances, this Administrative Law Judge finds that Respondent was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. The record evidence also shows that Respondent used her EBT card in several transactions that were in excess of an average transaction ([REDACTED]) for similar stores in the same general

geographical area. The evidence here shows that Respondent engaged in several transactions at the Take Out Party Store during the fraud period that were greater than \$15.00 which is the average transaction amount for similar stores in the same general geographical area.

However, the Department failed to include in the record any evidence to show that Respondents EBT transactions at other store were most likely the result of trafficking. 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 with regard to the other stores. Simply because Respondent's EBT history of transactions at the other stores during the period in question may be suspicious, it does not constitute clear and convincing evidence that she was engaged in FAP trafficking at these locations.

Respondent's signature on the Assistance Application in this record certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. (Exhibit 1, pp. 88-103) The Department OIG Agent has established that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices at the [REDACTED], but not at the remaining stores. 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 (1-1-2009), 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 shown that Respondent was guilty of her 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.

