

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011819
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: March 18, 2015
County: Jackson

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 March 18, 2015, from Lansing, 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, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP)?

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 September 25, 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 acknowledged the responsibility to report all persons that she was living together with while receiving Food Assistance Program (FAP) benefits on applications for assistance dated August 22, 2008, and August 15, 2012.
5. Respondent did not have an 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, 2009, through August 30, 2013.
7. During the 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 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 program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

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 \$500 or more, **or**
- the total OI amount is less than \$500, **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 (May 1, 2014), p. 12-13.

Intentional Program Violation

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 (May 1, 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 M Civ JI 8.01.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 16.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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.

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.

Spouses who are legally married and live together must be in the same group. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2014), pp 1-3.

In this case, the Respondent acknowledged on applications for assistance dated August 22, 2008, and August 15, 2012, the responsibility to report to the Department all members of her household, all members of her Food Assistance Program (FAP) benefit group, and all the income of those people. The Respondent was a Food Assistance Program (FAP) recipient as a group of one from March 1, 2009, through August 30, 2013. During this period of alleged fraud, the Respondent did not report that her husband was living in her home and did not report that he was receiving earned income from employment and unemployment compensation benefits at times during the period of alleged fraud. The Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] during the period of alleged fraud but would have been eligible for only \$ [REDACTED] of benefits if the Department had considered her husband's income during this period.

The Department alleges that the Respondent and her husband have been living together as defined by Department policy and that this placed a duty on the Respondent to report her husband's income to the Department. The Department's representative testified that if income received by the Respondent's husband had been reported to the Department, then she would have been eligible for a significantly less amount of benefits than she actually received. The Department presented evidence that the Respondent's husband is listed on a lease for the Respondent's home and that the husband pays the rent where the Respondent lives.

The Respondent did not dispute that her husband pays for her rent. The Respondent testified that she has not been living with her husband and that she was therefore under no duty to report her husband's income to the Department. The Respondent testified that she is dependent on her husband to maintain housing and that the fact that her husband appears on the lease is something beyond her control. The Respondent testified that her husband is quite abusive towards her but that her circumstances have prevented her from escaping the relationship. The Respondent did not dispute that her husband will spend nights at her home and that she is unable to keep him out of the home because he is on the lease and pays the rent. The Respondent testified that the husband generally stays elsewhere.

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). Moreover,

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. People v Wade, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

Since the Respondent is married, Department policy requires that her husband be included in her Food Assistance Program (FAP) benefit group if they are living together. The Department presented substantial evidence that the husband is listed on the lease for the Respondent's home and the Respondent does not dispute that does stay there. While BEM 212 does not specify how many nights a spouse must stay at a location to be considered living together with the group, this Administrative Law Judge finds that the husband was living together with the Respondent. The fact that the husband is listed on the Respondent's lease creates a presumption that was not rebutted by evidence that another location is the husband's home. Therefore, the Respondent's husband should have been made a member of the Respondent's Food Assistance Program (FAP) benefit group and the Respondent had a duty to report his income to the Department.

However, this Administrative Law Judge finds that the Respondent has consistently reported herself to the Department has a group of one. The Respondent has never provided false information about her husband to the Department despite the fact that eligibility determinations by the Department failed to discover that the husband should have been included in her benefit group as defined by BEM 212.

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.*

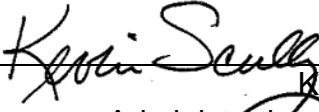
This Administrative Law Judge finds that the Department has failed to establish by clear and convincing evidence that the Respondent intentionally failed to report the circumstances of her husband's presence in her home for the purpose of receiving and maintaining Food Assistance Program (FAP) benefits that she was not entitled to. This Administrative Law Judge finds that the Respondent has been mistaken about whether her husband should have been included in her benefits group during the entire period she received benefits as a group of one. Therefore, an intentional program violation has not been established.

Since the living circumstances of the Respondent and her husband meet the Department's definition of living together, this Administrative Law Judge finds that the Respondent received more Food Assistance Program (FAP) benefits than she would have been eligible for if the Department has properly determined the size and composition of her Food Assistance Program (FAP) benefit group as defined by BEM 212. Therefore, this Administrative Law Judge finds that the Respondent did receive an overissuance of Food Assistance Program (FAP) benefits but that was not due to her intentional fraud.

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. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. The Department is ORDERED TO delete the Intentional Program Violation (IPV) from the Claimant's benefits case.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **3/24/2015**

Date Mailed: **3/24/2015**

KS/sw

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

cc:

