

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-13432
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 24, 2014
County: Wayne-55

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 April 24, 2014 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). Participants on behalf of Respondent included: [REDACTED] (Bengali-English Translator), [REDACTED] (Respondent) and [REDACTED] (Respondent's spouse).

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)

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 November 25, 2013 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 during the period of December 1, 2010 through July 31, 2012.
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 fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is December 1, 2010 through July 31, 2012 (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 program 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 Mich Admin Code, R 400.3001 through R 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 (10-1-2010).

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 (5-1-2010), p. 4.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, p 1 (5-1-2010). "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p 2 (10-1-2010). 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 (10-1-2009). 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 (10-1-2009).

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 (10-1-2010), p. 6; 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 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.*

In this matter, the OIG contends that Respondent received an OI of FAP benefits due to an IPV. Specifically The OIG alleges that Respondent, or members of her FAP group, engaged in illegal transactions at the [REDACTED] (“the store”) located at [REDACTED], [REDACTED]. The OIG further contends that the store was found to be engaged in FAP trafficking by the United States Department of Agriculture (USDA) and the store had limited food stock, had large amounts of expired food, did not have an optical scanner, nor did it have baskets, carts or grocery bags for its customers. The OIG indicates that the store also permitted its customers to illegally purchase items on credit using EBT cards. According to the OIG, documentation showed that Respondent engaged in high dollar transactions, even dollar amount transactions and transactions ending in unusual amounts at the [REDACTED], which indicated that Respondent was involved in FAP trafficking. As a result, the Department seeks recoupment of FAP benefits and FAP disqualification.

Respondent and her spouse both admit they visited the [REDACTED] [REDACTED] during the time period in question, but both contend that the transactions were legitimate. Respondent’s spouse testified that he purchased goat, beef, fish, cereal, cheese, rice and similar items at the store. Respondent’s spouse also stated that he would order the items and then pick up the items at a later date. He claimed that the store provided plastic bags for him to carry out his items.

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 substantial, material and competent evidence on the whole record.

In this case, the record shows that the store was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. The evidence showed that during the fraud period, the store was a small grocery store with limited eligible food stock items that was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. The evidence also showed that the store did not have sufficient eligible food items to support high dollar transactions and that many of the items sold were expired. The record also shows that the store's infrastructure and inventory, it would be impossible to conduct these types of transactions without fraud being present. According to the record, the store owner cooperated with the USDA investigation and admitted that he participated in a FAP trafficking operation that allowed patrons to cash in their FAP benefits for money and then pay for goods at a later date. The store owner signed a confession which was contained in the record.

Respondent was advised of her rights and responsibilities concerning program benefits. Respondent's signature on the Assistance Application in this record certifies that she was aware of these rights and responsibilities. The Department has established that Respondent (or a FAP group member) engaged in FAP trafficking at the store during the fraud period. Specifically, Respondent was responsible for several unauthorized transactions at the store from December, 2010 through July, 2012, which was evidenced by Electronic Benefit Transfer (EBT) FAP card usage history of transactions issued to Respondent. Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting responsibilities. Policy permits the use of circumstantial evidence to establish the presence of FAP trafficking. In addition, the Administrative Law Judge finds that Respondent's testimony that they would order food items on one day and pick them up at a later date confirms they were engaged in FAP trafficking.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (5-1-2010), 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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (10-1-2009), 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.

Here, the Department has shown that Respondent was guilty of her first IPV concerning 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.

In this matter, the Department has shown that Respondent received an OI of FAP benefits. 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 commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP program benefits in the amount of \$ [REDACTED]

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

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: May 5, 2014

Date Mailed: May 5, 2014

CAP/2014-13432

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.

CAP/las

cc:

