

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

IN THE MATTER OF:



Reg. No.: 201430108
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: August 14, 2014
County: Wayne (41)

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 14, 2014 from Lansing, Michigan. The Department was represented by [REDACTED] 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 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 March 7, 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 December 1, 2013 through December 31, 2013 (fraud period).
7. During the alleged fraud period, Respondent is alleged to have trafficked [REDACTED] in FAP benefits.¹
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 (7-1-2013).

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720 p 1 (7-1-2013). "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p 1 (7-1-2013). A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

¹ During the hearing the OIG Agent requested that the amount of alleged FAP benefits that were trafficked be changed from \$189.00 to \$80.00. The ALJ granted the OIG Agent's request.

BEM 203, pp 2-3 (7-1-2013). 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.

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, on December 17, 2013, posted the following message on his social media webpage (Facebook), "Anybody want to buy some food stamps?" The Department's OIG Agent further alleges that Respondent, the following day, used his Electronic Benefit Transfer (EBT) card to make an even and high-dollar amount purchase () at University Food. Respondent did not appear at the hearing to dispute the Department'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.

The record evidence in this case clearly shows that Respondent offered to sell his food stamps on his Facebook page. (Exhibit 1, pp 10-11). However, the first question that must be addressed here is whether the Department has shown, by clear and convincing evidence, that Respondent committed an IPV when he offered to sell his FAP benefits and/or EBT card on the internet.

In support of its position, the Department relies upon the one page of an October 4, 2011 memorandum from the United States Department of Agriculture (USDA) which was designed to provide guidance to its regional director concerning the sale of, or intent to sell, Supplemental Nutrition Assistance Program (SNAP) benefits and/or EBT cards in public or online through social media websites. (Exhibit 1, p. 9) According to the USDA's Food and Nutrition Service (FNS), the offer to sell SNAP benefits is an IPV because it is a violation of SNAP regulations. (Exhibit 1, p. 9) The USDA memo provides that 7 CFR 273.16(c)(2) defines IPV broadly to "consist of having intentionally committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device)." (Exhibit 1, p. 9) In addition, the USDA memo also provides that 7 CFR 273.16(e)(6) states "the hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section." (Exhibit 1, p. 9) This memo also references 7 CFR 274.7(a) for the proposition that SNAP benefits are only to be used by household members to purchase eligible food for the household, which would, by implication, exclude other activities such as selling or offering to sell SNAP benefits. (Exhibit 1, p. 9) Finally, the USDA memo indicates "The verbal offer of sale to another individual or the posting of an EBT card for sale online is evidence that the household member committed an IPV." (Exhibit 1, p. 9)

This Administrative Law Judge agrees with the Department's OIG Agent that the language in the federal statutes cited above provide that the solicitation or offer to sell food stamps does, in fact, violate the Food Stamp Act. See 7 CFR 273.16(c)(6), 7 CFR 273.16(e)(6) and 7 CFR 274.7(a). The next question is whether Respondent actually trafficked SNAP benefits.

The Department alleges that Respondent, on December 18, 2013 (the day after he posted the Facebook message), engaged in a suspicious transaction using his EBT card which is indicative of trafficking. The record contains a copy of Respondent's IG-311 EBT History of Transactions which shows that he visited the University Food Center on December 18, 2013 and made an \$80.00 purchase. (Exhibit 1, p. 24) The record also contains an itemized receipt of Respondent's purchase transaction from University Food Center from that day. (Exhibit 1, p. 18) This receipt shows that Respondent purchased multiple amounts of the same item such as: milk, taco seasoning, chili beans and vegetable oil. (Exhibit 1, p. 18). This Administrative Law Judge finds that the circumstantial evidence demonstrates that Respondent engaged in trafficking at the store on December 18, 2013. This is based on the totality of the circumstances which includes the fact that Respondent only one day before (December 17, 2013) offered to sell his EBT card on Facebook as well as the fact that his transaction resulted in an even dollar amount (\$80.00). It is very unlikely that Respondent could make a purchase of this type and obtain an even dollar total with sales tax included.

Thus, the Department has established that Respondent was responsible for and/or fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices. Respondent's intent can be inferred through circumstantial evidence. Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting responsibilities.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (7-1-2013), 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, the Department has shown that Respondent was guilty of his 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.

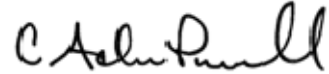
DECISION AND ORDER

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 receive an OI of FAP 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: 08/18/2014

Date Mailed: 08/19/2014

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.

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