

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

IN THE MATTER OF:



Reg. No.: 201430157
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 19, 2014
County: Muskegon

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 June 19, 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 8, 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 May 1, 2011 through July 30, 2011 (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. The Department alleges that this was Respondent's first IPV involving FAP benefits.
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 (1-1-2011).

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720 p 1 (1-1-2011). "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p 1 (1-1-2011). 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.

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 his Michigan-issued Electronic Benefit Transaction (EBT) card was used to make a purchase at Gordon Food Service as part of a two EBT card transaction on July 14, 2011. The Department's OIG Agent further argues that Respondent was not eligible for FAP as he incarcerated at the Muskegon County Jail during the fraud period. The OIG Agent report indicates, "The benefits are considered trafficked since they were used by someone other than [Respondent] during the time period." The report further provides that Respondent failed to timely report his incarceration to the Department. According to the report, the other EBT card was assigned to a third party who admitted that she had trafficked FAP benefits at other stores in the area. The OIG Agent also points out that because Respondent's EBT card cannot be used without a PIN,

Respondent is liable for trafficking during his period of incarceration. 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.

In the present case, the record shows that Respondent received [REDACTED] on his EBT card during May, June and July, 2011. (Exhibit 1, p 13). The record contained an IG-311 EBT history of purchases which indicated that Respondent's EBT card was used at various locations during the fraud period including a [REDACTED] purchase at [REDACTED] on July 14, 2011. The record evidence also shows that Respondent was incarcerated in the Muskegon County Jail from May 7, 2011 through August 28, 2011. (Exhibit 1, p 12). The record did not contain any reports from the federal government or other agency to establish that the [REDACTED] engaged in FAP trafficking at any time. The record evidence also did not include a copy of an Assistance Application signed by Respondent which certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims.

There is no dispute that Respondent was not personally involved in the alleged trafficking incidents at [REDACTED] or at any of the other locations during the fraud period. Respondent was in jail at the time. However, the Department OIG attests that trafficking exists because the individual who used Respondent's EBT card for trafficking could not have done so without the correct PIN. Thus, the Department contends that Respondent, by implication, is liable for trafficking based on the idea that he must have provided his PIN to the individual who participated in the trafficking activity.

As indicated above, the Department has the burden of proof to show by clear and convincing evidence which means that the evidence must be such that the Administrative Law Judge has a firm belief or conviction as to the truth of the precise facts in issue. Here, the evidence is not clear and convincing that Respondent provided the person who engaged in FAP trafficking with his PIN.

This Administrative Law Judge also finds that because the Department did not attach an Assistance Application signed by Respondent where he attests that he read and

¹ Located at 885 W Sherman Blvd, Muskegon, MI 49441.

understood the reporting requirements, the clear and convincing evidence does not show that Respondent is guilty of an IPV for failing to timely and properly report changes to the Department (i.e., that he was incarcerated or that his EBT card was lost or stolen). In other words, the Department has not established by clear and convincing evidence that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices. The Department also has not shown that Respondent redeemed or presented for payment coupons known to be fraudulently obtained or transferred.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. 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. Consequently, the OIG has failed to establish that Respondent committed an intentional program violation 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 (1-1-2011), p. 12. A disqualified recipient remains a member of an active group as long as he or 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.

Overissuance

When a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700, p 1 (1-1-2011). An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, p 1 (1-1-2011).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (1-1-2011). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (1-1-2011).

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 (1-1-2011).

Here, the Department has not shown that Respondent was guilty of his first IPV concerning FAP benefits. However, the Department has shown that Respondent received an OI of FAP benefits. The record shows that Respondent was active for FAP during the period of May 1, 2011 through July 30, 2011 and received [REDACTED] per month

during this time period. The record also shows that Respondent was incarcerated at this time and was not eligible to receive FAP benefits. Respondent failed to report his incarceration to the Department which resulted in a [REDACTED] OI due to a client error. According to BAM 700, the Department may recoup this OI.

In closing, this Administrative Law Judge therefore concludes that the Department has not shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program. However, the Department has shown that Respondent received an OI of FAP benefits in the amount of [REDACTED]. Consequently, the Department's request for FAP program disqualification shall not be granted.

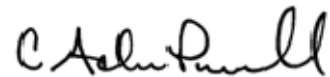
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did not 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 the Respondent shall not be disqualified from FAP as the Department has not shown that he committed an IPV.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 06/24/2014

Date Mailed: 06/24/2014

2014-30157/CAP

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/sw

cc:

