

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

IN THE MATTER OF:



Reg. No.: 201431780
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: June 25, 2014
County: Wayne

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 June 25, 2014 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, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
2. 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 14, 2014, to establish that Respondent 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 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 her understanding.
6. The Department's OIG contends that Respondent, on July 16, 2013, was guilty of an IPV after she attempted to sell FAP benefits using her Facebook page.
7. The Department's OIG does not allege that Respondent received an OI in FAP benefits.
8. The Department's OIG alleges that this was Respondent's first IPV.
9. 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 (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 resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (1-1-2014), p 36.

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 [REDACTED] or more, or

- the total OI amount is less than [REDACTED], **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 (7-1-2013), p. 12.

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 (7-1-2013), p. 6; BAM 720, p. 1.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, p 1. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700. A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 203. 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.

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.*

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 this case, the Department's OIG contends that Respondent is guilty of a FAP trafficking IPV based on statements purportedly made by Respondent on the social media website known as "Facebook." Specifically, the Department's OIG asserts that Respondent offered to sell FAP benefits, under the [REDACTED] or alias [REDACTED]. This Administrative Law Judge has reviewed the record which contains a black and white snapshot of a Facebook page apparently belonging to an African American female named [REDACTED]. This page included the following message, "I know somebody who selling stamps if anybody looking for some. [sic]" This page also indicated, "Who need some?" (See Exhibit 1, p. 7). The [REDACTED] Facebook page contains a photograph of an African American female, but the black and white image is grainy and difficult to decipher. (Exhibit 1, p. 7). Other than the name [REDACTED] there is no additional names or other information on this page which would provide [REDACTED] identity. (See Exhibit 1, p. 7). Moreover, [REDACTED] page does not contain a date, but the left-hand corner of the document indicates the following handwritten note, "July 16, 2013, 12:09 p.m." The record contains another black and white snapshot of a Facebook page belonging to [REDACTED]" (Exhibit 1, p. 8) This page contains the link to the page along with date "07/16/2013" on the lower right-hand corner. (Exhibit 1, p. 8) The black and white photographs on this page alone do not clearly establish that [REDACTED] and [REDACTED] is the same person. But this Administrative Law Judge would note that the two individuals share some of the same Facebook "friends." (Exhibit 1, p. 8) For purposes of this case, the undersigned will presume that Respondent are [REDACTED] are the same person and that Respondent is the person who posted the message on [REDACTED] Facebook page. The salient issue; however, is whether Respondent's Facebook message, which indicates that she knows someone who is selling "stamps," constitutes clear and convincing evidence of an IPV.

First, it should be noted that a review of the message itself provides that Respondent knows someone who is selling “stamps.” The message does not specifically indicate that Respondent is the individual who is making the solicitation. Rather, Respondent appears to be acting as an intermediary or “straw man” for someone who has “stamps” for sale. There is no clear indication in the record that the reference to “stamps” means food stamps. But even if the message was referring to food stamps, there is no independent evidence in the record that Respondent individually engaged in FAP trafficking. As indicated above, trafficking is defined as the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700. Here, there is no evidence that Respondent bought or sold FAP benefits. The record shows in this case that Respondent, at best, had formed the intent to traffic FAP benefits or may have even been guilty of attempted FAP trafficking. However, the clear and convincing evidence in this record does not support that Respondent either sold or bought FAP benefits for cash or consideration other than eligible food, which is required to establish trafficking. The Department did not include in the record any evidence that Respondent was involved in a transaction that could fairly be considered FAP trafficking.

Thus, this Administrative Law Judge finds that the clear and convincing evidence on the whole record does not establish that Respondent was guilty of FAP trafficking based on the comments contained on “Show Off’s” purported Facebook page.

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 not shown that Respondent was guilty of her first IPV concerning FAP benefits.

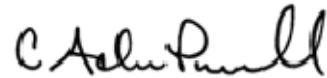
This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The Department’s OIG failed to establish with clear and convincing evidence that Respondent was guilty of an IPV and/or trafficking involving FAP benefits.

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 not commit an IPV by clear and convincing evidence.
2. The Department is ORDERED to delete the IPV and any disqualification period relating to the instant matter from Bridges in accordance with Department policy.

IT IS SO ORDERED.



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

Date Signed: 06/30/2014

Date Mailed: 06/30/2014

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.

CAP/jf

cc:

