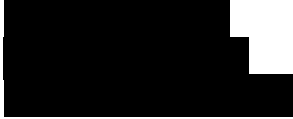


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 201432327
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 16, 2014
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

**HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, 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 September 16, 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 400.3178(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) 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 February 13, 2014 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 began using FAP benefits outside of the State of Michigan beginning in April, 2012.
5. The OIG indicates that the time period they are considering the fraud period is April 1, 2012 through November 30, 2012.
6. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits from the State of Michigan.
7. During the alleged fraud period, Respondent was issued FAP benefits from the State of North Carolina.
8. This was Respondent's first alleged 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.

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 \$1000 or more, or
 - the total OI amount is less than \$1000, **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 (12-1-2011), p. 12.

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 (12-1-2011), p. 6; BAM 720, p. 1.

IPV is suspected when there is 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. 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.

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.*

Disqualification

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

In this case, the Department OIG Agent contends that Respondent is guilty of an IPV after she allegedly failed to properly and timely report to the Department a change of residence to North Carolina. The Department OIG Agent cites BAM 105, pp. 8-9, which requires a client to report changes in circumstances within 10 (ten) days after the client is aware of them. The Department OIG Agent also alleges that Respondent received FAP from Michigan and North Carolina during the same time period. Respondent did not attend the hearing.

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.

As indicated above, the Department carries the burden of proof by clear and convincing evidence that Respondent acted intentionally. The Department must establish that Respondent was advised of her rights and responsibilities concerning program benefits. Specifically, BAM 720, p. 1, provides that a required element for a suspected IPV is that “the client was clearly and correctly instructed regarding his or her reporting responsibilities.” Generally, a client’s signature on the assistance application certifies that he or she was aware of these rights and responsibilities. Here, the Department OIG contends that Respondent submitted an Application for Assistance (DHS-1171) which bears her signature and shows that she acknowledged and understood her rights and responsibilities to properly report changes in household circumstances. (Exhibit 1, p. 2) However, the Department OIG Agent failed to include in the hearing record a copy of an application or other document containing Respondent’s signature. Instead, the Department OIG Agent offered a Bridges Program Request-Details document and Bridges Summary Inquiry which both purportedly show that Respondent submitted an application and was provided with FAP benefits from the Department. (Exhibit 1, p. 8, 12) In order to meet the clear and convincing evidence standard, the Department must produce a document which bears Respondent’s actual signature where she acknowledges the responsibility to report changes as required. The issue is not whether Respondent applied for and received FAP benefits. The salient question is whether the Department has properly shown that Respondent was clearly and correctly instructed regarding the reporting responsibilities. Based on the record in this matter, the Department cannot sustain its burden of proof, by implication, that Respondent properly acknowledged her responsibility to report changes as required.

The Department must also show that Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting responsibilities. The assistance application contains a section which asks the client to indicate the presence of any physical or mental disabilities. However, because the Department OIG Agent failed to include a copy of the application in the record, the Administrative Law Judge is unable to determine whether Respondent has impairment.

Therefore, the Administrative Law Judge finds that, because the Department’s OIG Agent did not offer into evidence any testimony or documentation signed by Respondent wherein she acknowledged the obligation to report changes in circumstances, the OIG Agent failed to establish with clear and convincing evidence that Respondent was clearly and correctly instructed regarding her reporting responsibilities. Similarly, the Department OIG Agent also failed to show that Respondent intentionally failed to report a change of residency. Consequently, the OIG Agent has failed to establish, by clear and convincing evidence, that Respondent committed an intentional program violation with respect to the FAP program.

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. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department

processes. BAM 700, p 4 (12-1-2011). 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 (12-1-2011). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (12-1-2011).

In this matter, the Department has shown that Respondent received an OI of FAP benefits. The OI was due to a client error because she inadvertently failed to report a change of residence to the Department. The amount of the OI in FAP benefits was \$2,850.00. 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, concludes that:

1. Respondent did not commit an IPV of FAP benefits by clear and convincing evidence.
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 Department shall delete from Bridges any IPV and disqualification period related to the FAP program related to this matter.

IT IS SO ORDERED.



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

Date Signed: 09/19/2014

Date Mailed: 09/22/2014

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/sw

cc:

