

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201435002
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 9, 2014
County: Shiawassee

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 three-way telephone hearing was held on July 9, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent personally appeared and provided testimony.

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 April 21, 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 issued by the Department.
4. Respondent was aware of the responsibility to truthfully and accurately report to the Department her household group composition.
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 it is considering the fraud period is June 1, 2012 through December 31, 2012.
7. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in 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 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 \$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. 10.

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.

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.*

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

Here, the Department OIG Agent contends that Respondent is guilty of an IPV after she intentionally and falsely reported that her husband (██████████) was out of the home in May, 2012. (Respondent and her husband resided at ██████████, ██████████). The OIG Agent further alleges that Respondent, on November 26, 2012, submitted an online application for Medical Assistance (MA) and Retroactive MA for all members of her household, including her husband. Specifically, the OIG Agent submits that Respondent's husband should not have been removed from the home and that his income should have been included for FAP purposes.

Respondent admits that she and her husband separated in May, 2012 and that she called her caseworker to inform her of the change. Respondent further testified that her husband also moved out of the home at ██████████ in May, 2012 to live with his parents. However, Respondent contends that her husband would return and visit her home frequently to see his children. According to Respondent, she and her husband

reconciled and he moved back in with the family in November, 2012. However, Respondent and her husband agreed to separate permanently in December, 2012.

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.

Essentially, this Administrative Law Judge must decide whether Respondent is guilty of an IPV by falsely reporting that her husband had left the home for purposes of receiving FAP benefits. The Department's policy concerning group composition for FAP is contained in BEM 212. FAP group composition is established by determining all of the following: (1) who lives together; (2) the relationship(s) of the people who live together; (3) whether the people living together purchase and prepare food together or separately; and (4) whether the person(s) resides in an eligible living situation. Spouses who are legally married and live together **must** be in the same group. Children include natural, step and adopted children. BEM 212, p. 1 (4-1-2012).

"Living with" means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p. 2. A person who is temporarily absent from the group is considered living with the group. BEM 212. A person's absence is temporary if all of the following are true: (1) his or her location is known; (2) he or she lived with the group before his absence (newborns are considered to have lived with the group); (3) there is a definite plan for his or her return; and (4) the absence has lasted or is expected to last 30 days or less. Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. BEM 212, p. 2.

Respondent contends that her husband was not "living with her" at [REDACTED], [REDACTED] from May, 2012 to November, 2012. In support of her position, Respondent offered sworn statements from her mother [REDACTED] her mother-in-law [REDACTED] and a neighbor [REDACTED]. Respondent's mother, in her statement, attests to the following: (1) she was the homeowner and landlord with whom Respondent and her husband (tenants) resided from November, 2008 through December, 2012; (2) Respondent's husband moved out in May, 2012; (3) Respondent took over rental payments and other expenses at the time; (4) At the end of December, 2012, Respondent and her husband "agreed to continue their separation" and both

parties left her home; (5) Respondent's husband moved in with his parents and Respondent and her children moved in with Ms. Eisenhower; and (6) Respondent pays monthly rent at [REDACTED] per month. (See Sworn Statement of [REDACTED], Exhibit 2, pp. 1-2)

Respondent's mother-in-law ([REDACTED]) signed a similar sworn statement which indicated: (1) her son (Respondent's husband) moved out of his home in May, 2012 and moved into their home in Montrose, Michigan; (2) Respondent's husband returned to his home in November, 2012; (3) at the end of December, 2012, Respondent's husband once again moved from his home and returned to live with her. (Sworn Statement of Nancy Cross, Exhibit 2, pp. 3-4).

Finally, Respondent provided a sworn statement from [REDACTED] (a resident of a portion of [REDACTED] multi-unit home), who states: (1) Respondent's husband was not in the home from May, 2012 to November, 2012; (2) Respondent's husband returned near the end of December, 2012; (3) Respondent and her husband "mutually agreed to a permanent separation and both moved from the home entirely" and (4) Respondent moved in with his parents and Respondent (and her two children) lived with her parents. (Sworn Statement of [REDACTED] Exhibit 2, p. 5).

The Bridges case comments, dated May 25, 2012, indicate that Respondent called the Department and reported that her husband moved out of the home "three weeks ago." (Bridges Case Comments, Exhibit 1, pp. 48-49). These case comments also reference that Respondent submitted an MA application, dated November 25, 2012 which shows that Respondent indicated that her husband was a group member from August, September, and October. (The Department did not include a copy of the MA application in evidence). (See Bridges Case Comments, Exhibit 1, pp. 48-49). The records also contained a Front End Eligibility (FEE) investigation report dated December 20, 2012. (Exhibit 1, pp. 58-61). According to the FEE investigation report, an unannounced home call was made to the location and the OIG Agent left a business card on the door. (Exhibit, 1, p. 59). The phone call was returned from Jeff Fry who indicated that Respondent was his sister and that she and her husband were going through a separation. (Exhibit, 1, p. 59). The FEE report also provided that Respondent was contacted and she confirmed that she and her husband had separated. (Exhibit, 1, p. 59). Respondent did state that her husband would come over and stay one or two nights a week with her and the children. (Exhibit, 1, p. 59).

The records also contained a copy of a Verification of Employment form which showed that Respondent's husband ([REDACTED]) worked at [REDACTED] from September 22, 2008 through January 25, 2013. (Exhibit 1, pp. 62-63). This document also indicated that [REDACTED] at [REDACTED]. (Exhibit 1, p. 62).

Here, the Department has established that Respondent intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. This Administrative Law Judge finds that Respondent and her husband were living together as defined by BEM 212. This Administrative Law Judge is not convinced by the witness

statements although they appear to be signed and notarized because they are self-serving in nature and were prepared by Respondent. However, the verification of employment form on Exhibit 1, page 62 (which shows that Respondent's husband lived at [REDACTED]) is persuasive as it was prepared by PRO Auctions (an uninterested third party). This document reveals that [REDACTED] lived with Respondent from 2008 through January, 2013. This covers the fraud period (June, 2012 through December, 2012). Specifically, Respondent intentionally and fraudulently reported that her husband had left the home, when the evidence shows that her husband was a household group member. 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. Respondent had no apparent physical or mental impairment that limits her 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 (12-1-2011), 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 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 did not receive an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

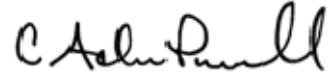
DECISION AND ORDER

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 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: 07/17/2014

Date Mailed: 07/17/2014

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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cc:

