

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-009576
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: February 18, 2015
County: Kent-District 1

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 February 18, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: [REDACTED] and his attorney [REDACTED], of [REDACTED]. Assisting with Respondent with translation of the hearing was [REDACTED], an interpreter of Somali, provided by the Department through Linguistica International.

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)?

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 August 27, 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 acknowledged his responsibility to provide accurate information to the Department, notify the Department of any change of residency, and notify the Department of the receipt of food assistance from another state when he submitted an application for assistance dated September 18, 2012.
5. Respondent did not have an 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 October 1, 2013, through June 30, 2013.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .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 (May 1, 2014), p. 12-13.

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 (May 1, 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 M Civ JI 8.01.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 16.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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 they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Respondent submitted an application for assistance to the Department dated September 18, 2013. The Respondent was a Food Assistance Program (FAP) recipient from October 1, 2012, through June 30, 2013. The Respondent began using Food Assistance Program (FAP) benefits in Illinois on January 13, 2013, and used them exclusively in Illinois through June 13, 2013. The Respondent applied for food assistance from the state of Minnesota on October 4, 2012, and received food assistance from Minnesota through June of 2013. The Department determined that the Respondent no longer had the intent to remain a Michigan resident as of October 1, 2013. If the Respondent had reported a change of residency to the Department, the Respondent would not have been eligible for any Food Assistance Program (FAP) benefits and the Department would have closed his case.

To be eligible for Food Assistance Program (FAP) benefits, a person must be a Michigan resident. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students. Department of Human Services Bridges Eligibility Manual (BEM) 220 (July 1, 2014), p 1.

On the Respondent's application for assistance, he reported to the Department that he and his family intended to remain in Michigan. The Respondent's application for assistance included instructions to report any changes in circumstances that would affect his eligibility to receive continuing benefits.

The Respondent's circumstances apparently did change after applying for benefits in Michigan on September 18, 2012, because he applied for food assistance from the state of Minnesota on October 4, 2012. No evidence was provided on the record that the Respondent reported of his Minnesota application for food assistance or that he had left Michigan to the Department. At the time of the hearing, the Respondent resides in Minnesota, and no evidence was provided on the record that he is temporarily located in Minnesota and he has intended to remain a Michigan resident since leaving the state. Applying for food assistance in another state is evidence of a lack of intent to remain a Michigan resident.

The Respondent's Food Assistance Program (FAP) benefits were used exclusively in Illinois from January 13, 2013, through June 13, 2013. The exclusive use of Food Assistance Program (FAP) benefits outside Michigan is evidence of a lack of intent to remain a Michigan resident.

The Respondent's attorney argued that the Respondent did not intentionally violate the requirements of the Food Assistance Program (FAP). The Respondent's attorney argued that the Respondent's lack of an ability to read or understand the English language was a barrier to him understanding or acknowledging the responsibilities of

receiving Food Assistance Program (FAP) benefits when he signed his application for Food Assistance Program (FAP) benefits. The Respondent's attorney argued that the Department failed to provide evidence of a completed Certification of Translation / Interpretation for Non-English Speaking Applications or Recipients (DHS-848), and therefore the Department has failed to establish that the Respondent, a non-English speaker, understood his responsibilities.

Department policy includes the following instructions:

Document translation/interpretation assistance provided to a client on the DHS-848, Certification of Translation/Interpretation for Non-English Speaking Applicants or Recipients.

Note: If interpretation is provided over the phone, document this information on the interpreter's signature line of the DHS-848. If both client and interpreter are on the phone, acquire signatures on the DHS-848 via fax or email.

Department of Human Services Bridges Administrative Manual (BAM) 105 (April 1, 2014), p 15

The Respondent's application for assistance indicates that he reported that he does not speak English and that he requested an interpreter when applying for benefits. The Department's representative testified that an interpreter was provided during the application process.

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.*

This Administrative Law Judge finds that the Respondent intended to apply for Food Assistance Program (FAP) when he submitted his application for assistance. It is not clear whether he ever intended to remain a Michigan resident, but the evidence supports a finding that as of October 4, 2014, the Respondent did not have the intent to remain a Michigan resident. As a non-resident of Michigan, the Respondent was not eligible for the Food Assistance Program (FAP) that he received from October 1, 2013, through June 30, 2014.


This Administrative Law Judge finds that Department's failure to present a DHS-848 on the record to be harmless error. This Administrative Law Judge finds that based on a review of the Respondent's application for assistance that sufficient translation was provided to obtain all of the information necessary to determine the Respondent's eligibility for Food Assistance Program (FAP) benefits. This Administrative Law Judge finds that the evidence also supports a finding that the Respondent was informed of his duties to receive Food Assistance Program (FAP) benefits and that he accepted these responsibilities.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent acknowledged his responsibility to report changes to his circumstances to the Department, and intentionally failed to provide the Department with notice of his change of residency for the purposes of establishing and maintaining benefits that he was not eligible for.

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. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.


Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: **3/3/2015**

Date Mailed: **3/3/2015**

KS/las

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.

cc:

