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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-013316
Issue No.: 3005
Case No.: [redacted]
Hearing Date: April 21, 2015
County: Wayne-District 31 (Grandmont)

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 April 21, 2015 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 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 October 13, 2015, 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 timely and properly report to the Department any changes in circumstances, including changes in residency.

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 February 1, 2012 through September 30, 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 FAP IPV.

10. A notice of hearing was mailed to Respondent at the last known address and was 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 and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .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 (12-1-2011), p. 6. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105, p. 6. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, pp. 8-9. 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, pp. 8-9.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105, p. 6. This includes completion of necessary forms. BAM 105, p. 6. 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, p. 6.

Here, the Department alleges that Respondent committed an IPV when she failed to timely and properly report to the Department a change of address in order to receive an OI of benefits. 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.

The record evidence shows that Respondent intentionally and fraudulently failed to report a change of address which was evidenced by IG-311 Electronic Benefit Transfer (EBT) FAP card usage history of transactions issued to Respondent. The record confirms that Respondent used her Michigan-issued EBT card in the state of South Carolina for a period in excess of 30 (thirty) days, which demonstrates a change of residency. (Exhibit 1, pp. 41-44). The record also shows that Respondent failed to properly and timely report this change to the Department. Respondent was advised of her rights and responsibilities concerning program benefits. (Exhibit 1, p. 21) Respondent's signature on the assistance application in this record certifies that she was aware of these rights and responsibilities. (Exhibit 1, p. 21) Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting responsibilities. This Administrative Law Judge finds that the clear and convincing evidence on the whole record shows that Respondent committed an IPV because she intentionally failed to report information needed to make a correct benefits determination.

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.

Here, because the Department has shown that Respondent was guilty of her first IPV concerning FAP benefits, Respondent shall be personally disqualified from receiving FAP benefits for a period of 1 year.

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. 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 Respondent failed to report the change in residency. 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 program 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 Nick Lyon, Director
Department of Health and Human Services

Date Signed: 05/01/2015

Date Mailed: 05/01/2015

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: [redacted]