

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-000121
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: April 22, 2015
County: Gratiot

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on April 22, 2015, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 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 January 5, 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 report to the Department any changes in household circumstances; including changes in residency.
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 August 1, 2013¹ through January 31, 2014 (fraud period).
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 [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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (7-1-2013), p. 8. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105, p. 8. These

¹ The Hearing Summary (DHS-3050) and the Investigation Report both indicate that the fraud period began on July 1, 2013; however the OIG Agent, during the hearing, testified that the actual fraud period began on August 1, 2013.

² During the hearing, the OIG Agent indicated that the proper OI amount is \$1,167.00 rather than the "\$1,367.00" that is indicated on the DHS-3050 and Investigation Report.

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, p. 8.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105, p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 1. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105, p. 1.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1000 or more, or
 - the total 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 (7-1-2013), 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 (7-1-2013), p. 1; 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.

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). Moreover, 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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

In this case, the Department's OIG Agent contends that Respondent committed an IPV concerning her FAP benefits when failing to report in April, 2013 that she had relocated to Hawaii and continued to make purchases using her Michigan Electronic Benefit Transfer (EBT) card. The OIG further argues that Respondent obtained employment in Hawaii and continued to use her Michigan EBT card in Hawaii through March 23, 2014. Respondent did not dispute the OIG's assertions but stated that her actions were negligent, but not intentional. Respondent testified that she initially visited Hawaii in April, 2013 for vacation purposes but that she did not have enough money to return to Michigan so she was forced to get a job.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Although Respondent argues that her actions were not intentional, but were the result of mere negligence or inadvertence, the record does not support her position. The record evidence shows that Respondent was aware of the responsibility to timely and accurately report to the Department all household changes in residency. Respondent's assistance application contains her electronic signature, where she agrees that she is required to give the Department "correct and complete information about you and everyone in your household." (Exhibit 1, pp. 22-23). In addition, the assistance application provides instruction regarding Respondent obligation to report changes within 10 days and that failure to report a change may result in prosecution for perjury or fraud. (Exhibit 1, p 23). Respondent's application did

not indicate that she had a mental or physical disability that would affect her understanding or ability to report changes to the Department. (Exhibit 1, pp. 10-41).

In addition, Respondent's testimony that she did not act intentionally is not credible. Respondent's actions clearly demonstrated that her actions were not the result of mere inadvertence. Respondent never reported to the Department that she intended to establish Hawaii as her new residence. The record shows Respondent knowingly used her Michigan EBT card (also known as a "Bridge card") while in Hawaii from August, 2013 through January, 2014. The fact that Respondent rented a room and obtained employment in Hawaii also shows that she intended to remain in Hawaii. For almost a year, Respondent continued to use her Michigan EBT card without ever reporting this to the Department.

This Administrative Law Judge; therefore, concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation concerning FAP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 2. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 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. 15.

In this case, the Department has established that Respondent was guilty of her first FAP IPV which carries a one year disqualification period.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Department has shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

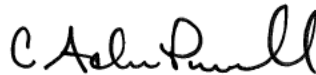
DECISION AND ORDER

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. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of [REDACTED].

The Department is ORDERED to initiate recoupment/collection 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: **5/6/2015**

Date Mailed: **5/6/2015**

CAP/sw

NOTICE: The law provides that within 30 days of receipt of this Order, Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. Under Mich Admin Code, R 792.10137, a copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System.

cc:

