

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-013042
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 23, 2015
County: Oakland-District 4

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 September 23, 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 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 July 17, 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 accurately report circumstances on the assistance application.
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 April 17, 2013 to July 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 \$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 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.

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

- Willful overpayments of \$500.00 or more under the AHH program.
- 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 \$500 or more, or
 - the total amount is less than \$500, 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 (10-1-2014), p. 5.

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 (5-1-2014), 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.

People convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. BEM 203, p 1 (7-1-2013). A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203, p. 1. The person is disqualified as long as the violation occurs. BEM 203, p 2.

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if: (1) terms of probation or parole are violated, and (2) the qualifying conviction occurred after August 22, 1996. BEM 203, p 2. BEM 203, page 2, also provides that for FAP, “[a]n individual convicted of a felony for the use, possession, or distribution of controlled substances **two or more times** will be permanently disqualified if both offenses occurred after August 22, 1996.” (With emphasis added).

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.

In this case, Respondent reported on his assistance application that he was not “fleeing from felony prosecution, fleeing an outstanding felony warrant for [his] arrest or jail.” (Exhibit 1, p. 28) On the assistance application, Respondent answered, “yes” to the following question, “Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?” (Exhibit 1, p. 28) However, Respondent denied that he had been convicted more than once. (Exhibit 1, p. 28)

The OIG argues that: (1) Respondent, on September 28, 2000, pled guilty to Felony Controlled Substance-Delivery/Manufacture Marijuana in the 6th Circuit Court and (2) that he pled guilty to the same offense on October 20, 2000 in the 43rd Circuit Court. (Exhibit 1, p. 31) In support, the OIG relies solely upon an email sent from a Michigan Department of Corrections (MDOC) employee/investigator. (Exhibit 1, p. 31) The Department did not include any additional documentation such as an Offender Tracking Information System (OTIS) report, local court documents or other objective documentation. The issue is whether an email from an MDOC employee is sufficient to establish that Respondent had 2 drug-related felony convictions after August 22, 1996 during the relevant time period.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. An email from the MDOC that indicates Respondent had 2 drug-related felony convictions that is not accompanied by additional documentation, does not rise to the level of clear and convincing evidence that Respondent is guilty of an IPV. The MDOC employee who sent the email did not testify during the hearing in this matter. With the MDOC employee's testimony, the Administrative Law Judge has no way to verify how he obtained the information concerning Respondent's felonies or whether the information is even accurate. 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). Perhaps, even an OTIS report or documentation from the appropriate local court could confirm whether Respondent had 2 drug related felonies at the time he applied. Based on the evidence in this record, in order for the Administrative Law Judge to find that Respondent did, in fact, have the 2 drug-related felony convictions at the time he applied for FAP benefits, the ALJ would have to rely upon less than clear and convincing evidence.

This Administrative Law Judge recognizes the possibility that Respondent very well may have had the 2 drug felony convictions at the time of application; however, this record does not contain clear and convincing evidence to support this proposition. Consequently, the OIG has failed to establish that Respondent committed an intentional program violation with respect to the FAP program.

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. 16. 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. 16.

In this case, the Department has not established with clear and convincing evidence that Respondent committed an IPV. As a result, the Department has not provided any evidence in this record that Respondent should be disqualified from FAP benefits.

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 order to establish that Respondent received an OI of FAP benefits, the Department must show that Respondent was not entitled to receive the benefits.

Because the Department has failed to show that Respondent committed a FAP IPV, the Department also has not shown that Respondent was not entitled to FAP benefits during the period in question. Accordingly, the Department has not shown that Respondent received an OI of FAP benefits.

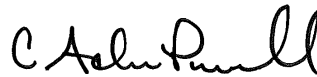
DECISION AND ORDER

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

The Department is ORDERED to delete the OI and cease any recoupment action.

It is FURTHER ORDERED that Respondent shall not 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

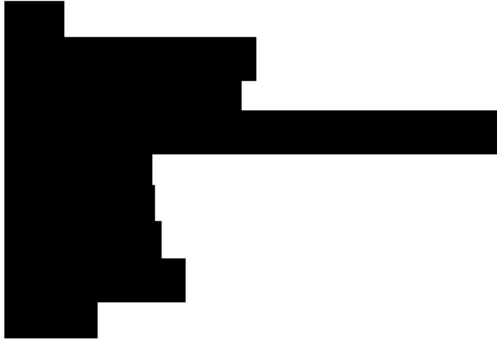
Date Signed: **9/30/2015**

Date Mailed: **9/30/2015**

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NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

A large black rectangular redaction box covers the names and contact information of the individuals listed in the 'cc:' field.