

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008225
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 09, 2015
County: Isabella

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 9, 2015 from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Attorney [REDACTED] (P71914) represented the Respondent, who appeared at the hearing in person 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 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 June 3, 2015 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. (Department's Exhibit 1, pp 1, 4)
2. The OIG has requested that Respondent be disqualified from receiving program benefits. (Department's Exhibit 1, p 4)

3. Respondent submitted an online application for food assistance on December 4, 2012. (Department's Exhibit 1, pp 12-35)
4. Respondent was a recipient of FAP benefits issued by the Department. (Department's Exhibit 1, pp 51-52)
5. Respondent was employed at [REDACTED] during the relevant time period. (Department's Exhibit 1, pp 25, 45-50)
6. Respondent gave birth to a child on February 19, 2014. (Department's Exhibit 1, p 39)
7. On April 17, 2014, the Department received Respondent's completed Semi-Annual Contact Report (DHS-1046) which indicated under Section 4-Household Income, "off for 6 weeks due to maternity leave." (Department's Exhibit 1, pp 36-37)
8. On October 31, 2014, the Department received Respondent's completed Redetermination (DHS-1010) which indicated the following under the client comments section: "I been working since the 1 of Oct been working overtime right now but won't last because short-handed. I will bring in another check stub on Nov 3 or Oct 31." [sic] (Department's Exhibit 1, p 43)
9. Respondent was aware of the responsibility to report to the Department any changes in household circumstances within 10 days. (Department's Exhibit 1, pp 33-37)
10. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. (Department's Exhibit 1, p 16)
11. The Department's OIG indicates that the time period it is considering the fraud period is June 1, 2014 through November 30, 2014. (Department's Exhibit 1, p 4)
12. 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. (Department's Exhibit 1, p 4)
13. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] (Department's Exhibit 1, p 4)
14. The Department contends that this was Respondent's first FAP IPV. (Department's Exhibit 1, p 4)
15. 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 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-.3011.

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) (6-1-2015), p 36.

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. 6; BAM 720 (10-1-2014), p. 1.

Pursuant to BAM 720, p. 10, 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 \$500 or more, or
- the total OI 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.

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.*

Here, the Department OIG alleges that Respondent committed an IPV when she failed to timely report a change in household income in order to receive an OI of FAP benefits. Specifically, the Department OIG contends that Respondent failed to timely report to the Department that she had returned to work at [REDACTED] after her maternity leave. The Department OIG claims Respondent submitted a DHS-1046 form on April 16, 2014 where she misrepresented that she was going to be off work for six weeks due to maternity leave. However, the Department OIG argues, Respondent had been working at [REDACTED] and received earned income between June 1, 2014 through November, 2014.

Respondent, on the other hand, contends that she did not intentionally misrepresent her circumstances to the Department. Respondent testified that she was off work without pay for six weeks in April, 2014 due to maternity leave. Respondent stated that she called her caseworker and reported that she returned to work sometime in April, 2014. However, Respondent also testified that she received vacation and overtime pay when

her hours increased after another employee was terminated. Respondent provided a statement from her employer that indicated her employer sends mail to the Department through the main office once a week. (Respondent's Exhibit 1)

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 testified that she did not work due to maternity leave for a six week period. Respondent says she did not intend to conceal her income from the Department. Respondent further testified that she called her caseworker in April, 2014 and reported that she had returned to work and had been working overtime. Although Respondent's son was born in February, 2014, it is unclear from the record exactly what time period Respondent was off work due to maternity leave. The employment verifications show that Respondent's hours of employment decreased from March 4, 2014 through April 1, 2014. (Department's Exhibit 1, p 47) But then her hours increased during the period of April 15, 2014. (Department's Exhibit 1, p 47). Respondent testified during the hearing that the March 4, 2014 entry on her paystub represented vacation pay.

A closer examination of Respondent's Semi-Annual Contact Report (DHS-1046) received on April 17, 2014, shows that her household monthly gross income used in her food assistance budget is \$0.00 and that she responded no to the question whether her household gross earned income changed by more than \$100. (Department's Exhibit 1, p 37) Respondent did not answer whether anyone had a change in earnings because they changed, started or stopped a job. (Department's Exhibit 1, p 37) The next section of this document asks that if you answered yes to either question above and the income changed by more than \$100, include proof of earnings the household received for the past 30 days or if a job ended in past 6 months and not reported, please provide proof. (Department's Exhibit 1, p 37). On that section, Respondent indicates her name and "off for 6 weeks due to maternity [sic] leave." (Department's Exhibit 1, p 37) A review of this document reveals that Respondent failed to properly complete the DHS-1046. The evidence does not show that Respondent intentionally misrepresented her maternity leave in so much as she was negligent when she completed section 4 of the DHS-1046. This Administrative Law Judge does not find that Respondent intended to communicate

that she planned to go off work for 6 weeks in the future due to maternity leave. (Department's Exhibit 1, p 37).

Respondent's testimony that she did not act intentionally is credible. The document evidence in the record shows that Respondent did, in fact, report changes in household circumstances to the Department, but that her written communication to the Department was less than clear at times. The whole record shows that Respondent was less than astute with regard to her written communication to the Department, but not that she intentionally and fraudulently failed to report a change of income in order to receive an OI of FAP benefits. (Department's Exhibit 1, pp 37, 43) In addition, the Department OIG was unable to refute Respondent's sworn testimony that she reported to her caseworker in April, 2014 that she was off work due to maternity leave. Accordingly, this Administrative Law Judge does not find clear and convincing evidence on the whole record that Respondent committed an IPV.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, 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 not shown that Respondent was guilty of her first IPV concerning FAP benefits. Accordingly, Respondent shall not be disqualified from receiving 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. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4. 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. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4.

In this matter, Respondent acknowledged that she received an OI of FAP benefits and testified that she had already began the process of repayment. Based on Respondent's admission, this can fairly be characterized as a client error. According to BAM 700, the Department is entitled to 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 not commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED that the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits for a period of 12 months.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/18/2015**

Date Mailed: **9/18/2015**

CAP/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:

