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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 2, 2016
MAHS Docket No.: 15-013777

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE [REDACTED] Vicki Armstrong

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 26, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified as a witness on behalf of the Department. Department Exhibit A, pages [REDACTED] was admitted.

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).

The record closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance 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) for FAP trafficking and using FAP benefits out of state?
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 31, 2015, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed two IPV's. (Dept. Exh. A, p 1).
2. The OIG has requested that Respondent be disqualified from receiving program benefits. (Dept. Exh. A, p 5).
3. Respondent was a recipient of FAP benefits issued by the Department.
4. In December 2012, [REDACTED] was permanently disqualified from SNAP based on a USDA/FNA trafficking investigation based on suspected food stamp trafficking. (Dept. Exh. A, p 4).
5. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2012 through July 31, 2012 (fraud period) for FAP trafficking and November 1, 2012 through July 31, 2013 (fraud period) for using FAP benefits solely outside the State of Michigan. (Dept. Exh. A, pp 4-5).
6. During the fraud period of July 1, 2012 through July 31, 2012, 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. (Dept. Exh. A, pp 4-5).
7. During the fraud period of November 1, 2012 through July 31, 2013, 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. (Dept. Exh. A, pp 4-5).
8. The Department alleges that Respondent received an overissuance in FAP benefits totaling [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.

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. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, (5-1-2014) p 1.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, (5-1-2014) p 1. "Trafficking" is the buying or selling of FAP benefits for cash or consideration other than eligible food. BAM 700, p 1. A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BEM 203, (7-1-2014) pp 2-3. These FAP trafficking disqualifications are a result of: (1) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or (2) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203, p 3.

With regard to FAP cases only, an IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 700, p 8.

The overissuance amount for trafficking-related IPV's is the value of the trafficked benefits as determined by: (1) the court decision; (2) the individual's admission; or (3) documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store. BAM 720, p 8. This can be established through circumstantial evidence. BAM 720, p 8.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p 16. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720, p 16. If the court does not address disqualification in its order, the standard period applies. BAM 720, p 17.

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 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's OIG Agent contends that Respondent is guilty of an IPV because she engaged in unlawful transactions using her Electronic Benefit Transfer (EBT) card at the [REDACTED] (the market), which was under a federal investigation for FAP trafficking. The Department alleges that Respondent was engaged in FAP trafficking based on records that showed she had several unauthorized transactions at the store during the alleged fraud period of July 1, 2012 through July 31, 2012. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

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 the present case, the record evidence shows that the market was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. This is supported by the photographs of the market which showed that the market was small with limited eligible food stock items that was not equipped with a conveyor system or bagging area for patrons to purchase and carry out eligible food items. The photographs in the record revealed that the store provided a moderate inventory of eligible items including, but not limited to chips, pop,

candy, and basic food essentials, much of which were past the sell by date. The record evidence also shows that the store lacks sufficient eligible food items in its inventory to support high dollar transactions, but engaged in multiple high-dollar transactions using EBT cards that were above the average for similar stores in the same general geographical area.

The Department OIG Agent has established that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices. This was supported by the record evidence which revealed that Respondent during the fraud period of July 1, 2012 through July 31, 2012, used her EBT FAP card at the store and made several purchases that were unauthorized. The IG-312 EBT history records showed that Respondent engaged in several EBT transactions that were well above the average transaction for that type of store. The records also show that the size of the store coupled with the amount of items in the store inventory demonstrate that Respondent's EBT transactions were not lawful. The Administrative Law Judge finds the evidence is clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. Consequently, the Department OIG Agent has established that Respondent committed an IPV through trafficking with respect to the FAP program.

In addition, the Department's OIG Agent contends that Respondent is guilty of an IPV because she engaged in unlawful transactions using her Electronic Benefit Transfer (EBT) card solely outside the state of Michigan from November 1, 2012 through July 31, 2013. Record evidence shows Respondent used her Michigan FAP benefits solely outside the State of Michigan for more than 30 days in the states of [REDACTED], [REDACTED] and [REDACTED]. Respondent did not appear at the hearing to dispute the OIG's allegations.

However, the Department's OIG failed to submit a FAP application signed by Respondent. Without a signature on a FAP application there is no evidence to show that Respondent was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. Without the signed application, it also cannot be determined whether Respondent had an apparent physical or mental impairment that would not limit her understanding or ability to fulfill the requirement that she was aware the failure to change her address or use her FAP benefits solely outside the State of Michigan for more than 30 days could result in criminal or civil or administrative claims. The clear and convincing standard requires proof that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Without Respondent's signed FAP application, this Administrative Law Judge cannot find that Respondent intentionally failed to notify the Department that she was out of state for more than 30 days. (emphasis added).

Disqualification

A court or hearing decision that finds a client committed an 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 she 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 overissuance 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 shown that Respondent was guilty of her first IPV concerning trafficking FAP benefits. The Department has also shown that Respondent received an overissuance of ██████ in FAP benefits. According to BAM 700, the Department may recoup this ██████ FAP overissuance.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program through FAP trafficking. Consequently, the Department's request for FAP program disqualification and full restitution of ██████ must be granted.

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 a FAP trafficking IPV.
2. Respondent did receive an overissuance of FAP program benefits in the amount of ██████ for trafficking.

The Department is ORDERED to initiate recoupment procedures for the amount of ██████ in accordance with Department policy.

The Department is ORDERED that Respondent be disqualified from FAP for a period of 12 months.

It is FURTHER ORDERED that the Department delete the alleged [REDACTED] FAP overissuance and cease any recoupment action.

Vicki A. Armstrong

Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

[REDACTED]

[REDACTED]
[REDACTED]
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