



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 14, 2016
MAHS Docket No.: 15-015669
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 March 31, 2015 from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself and provided testimony. [REDACTED] (Respondent's fiancé) appeared as a witness on behalf of Respondent.

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 August 26, 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 that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern FAP benefits.
6. The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2012 to February 28, 2013 (fraud period).
7. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
9. This was Respondent's second alleged FAP 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.
11. The hearing occurred on March 31, 2016.
12. During the hearing, the Department's OIG Agent argued that Respondent engaged in several unauthorized transactions using her Electronic Benefit Transfer (EBT) FAP card at the BP/Amoco gas station/convenience store ("gas station"). Specifically, the Department's OIG Agent contends:
 - a. The gas station was involved in several suspicious transactions involving FAP purposes by several different individuals. [Exh. 1, p. 11-16].
 - b. The gas station is attached to a [REDACTED] and is very small in size. [Exh. 1, p. 11-16].
 - c. The gas station offered the following items for sale: chips, hostess items, snack foods and beverages. The gas station did not sell any fresh produce, vegetables, or meat. [Exh. 1, p. 11-16].
 - d. The gas station did not offer bags, carts or containers for sold items and had one register, which was located behind protective glass. [Exh. 1, p. 11-16].
 - e. The average transaction other similarly situated gas stations in the same geographical area was up to \$ [REDACTED] [Exh. 1, p. 11-16].

- f. Respondent frequented the gas station and engaged in several high dollar amount transactions. [Exh. 1, pp. 57-59].
 - g. The pattern and frequency of Respondent's transactions at the gas station was suspicious for trafficking. [Exh. 1, pp. 57-59].
 - h. The highest amount Respondent spent at the gas station was \$ [REDACTED] and the lowest amount was \$ [REDACTED] [Exh. 1, pp. 57-59].
13. At the hearing, Respondent denied that she acted fraudulently or engaged in FAP trafficking at any time. Respondent did not deny that she visited the gas station, but she testified that she has poor eating habits and often purchases large items of snack foods. Respondent's fiancé also provided similar testimony.
14. Respondent's testimony that she did not act fraudulently when she made purchases at the gas station using her EBT card is credible.

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 (OI) 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 OI. BAM 700, (1-1-2016) p 1.

An IPV is suspected for a client who is alleged to have trafficked or is trafficking FAP benefits. BAM 720, (1-1-2016) 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, (10-1-2015) 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.

For FAP cases, the Department will disqualify an active **or** inactive recipient who:

- Is found by a court or hearing decision to have committed IPV, **or**
- Has signed a Request for Waiver of Disqualification Hearing (DHS-826) or Disqualification Consent Agreement (DHS-830), **or**
- Is convicted of concurrent receipt of assistance by a court, **or**
- For FAP, is found by SOAHR (MAHS) or a court to have trafficked FAP benefits.

BAM 720, pp 15-16.

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 16.

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.*

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 Department's OIG Agent failed to establish by clear and convincing evidence on the whole record that Respondent was guilty of FAP trafficking. Simply because Respondent's Electronic Benefit Transfer (EBT) history of transactions during the period in question may be suspicious, it does not follow that Respondent's (EBT) transaction history constitutes "clear and convincing evidence" that she was engaged in FAP trafficking. Respondent's testimony that she regularly consumes snack foods at the gas station is credible. The evidence in this record does not show that Respondent either bought or sold FAP benefits for cash or consideration other than eligible food. The evidence is also not clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices in violation of law. Similarly, the evidence is not clear and convincing that Respondent redeemed or presented for payment coupons known to be fraudulently obtained or transferred.

Respondent's transactions at the gas station, which amounted to \$ [REDACTED] was suspicious at best. However, suspicious transactions, without more, does not become clear and convincing evidence of FAP trafficking. In addition, this Administrative Law Judge finds that Respondent's explanation for her EBT card transactions at the gas station was credible. Consequently, this Administrative Law Judge finds the Department's OIG Agent has failed to establish that Respondent committed an intentional program violation with respect to the FAP program.

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 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 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.

As indicated above, the Department has not shown that Respondent was guilty of her second IPV concerning FAP benefits. The Department has also shown that Respondent did not receive an OI of FAP benefits.

This Administrative Law Judge therefore concludes that the Department has not shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program, nor has the Department shown that an OI of FAP benefits occurred such that FAP disqualification is warranted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did not commit an IPV due to FAP trafficking.
2. Respondent did not receive an OI of FAP benefits in the amount of \$ [REDACTED]

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



CP/las

C. Adam Purnell
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

Petitioner

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]