



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 28, 2016
MAHS Docket No.: 15-026726
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on July 19, 2016, 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 Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed 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 Respondent was a Food Assistance Program (FAP) recipient from January 1, 2013, through August 31, 2014. Exhibit A, p 41.

2. The Respondent used a portion of her Food Assistance Program (FAP) benefits to make purchases at a business under investigation for trafficking of FAP benefits. Exhibit A, pp 11 – 38.
3. From January 1, 2013, through August 31, 2014, the business suspected of trafficking in benefits conducted \$ [REDACTED] transactions involving Food Assistance Program (FAP) benefits with \$ [REDACTED] average transaction and the highest transaction was \$ [REDACTED]. Exhibit A, p 37.
4. On September 26, 2013, the business suspected of trafficking in benefits had an inventory of greater than 20 units of the following items: butter/margarine, cheese, ice cream, milk, sour cream, juice, apricots, bananas, beans, carrots, corn, peppers, potatoes, squash, tomatoes, soup, infant formula, bread, cakes, breakfast cereal, pasta, rice, corn meal, flour, snacks, infant cereal, lunch meat, canned meat, eggs, and fish. Exhibit A, p 31.
5. From January 1, 2013, through August 31, 2014, the Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED]. Exhibit A, p 41.
6. The Department's OIG filed a hearing request on December 31, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
7. On December 31, 2015, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6 – 9.
8. This was Respondent's first alleged IPV.
9. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2014), pp 12-13.

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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (May 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. 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.

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.

Evidence that the client had prior knowledge of these requirements is unnecessary to establish an Intentional Program Violation (IPV) for trafficking. IPV is automatically suspected for a client who is alleged to have trafficked FAP benefits. 7 CFR 273.16, BAM 720.

The Respondent was a FAP recipient from January 1, 2013, through August 31, 2014. The Department alleges that the Respondent made purchases with her FAP benefits at a business suspected of trafficking in FAP benefits for purchases totaling \$ [REDACTED]

On January 19, 2013, Respondent made four purchase of \$ [REDACTED] at 1:23 pm, \$ [REDACTED] at 3:41 pm, \$ [REDACTED] at 3:42 pm, and \$ [REDACTED] at 3:47 pm, for a daily purchase total of \$ [REDACTED]. The Department has no evidence of what item were purchased in any of these transactions. The Department alleges that this pattern of purchases is indicative of FAP trafficking because the total daily amount of benefits used at this business suspected of benefit trafficking exceeds \$25. This Administrative Law Judge finds that the purchases made on January 19, 2013, are not inconsistent with the known inventory of this business, and that three purchases for less than \$5 within a seven minute period is not unreasonable. The Department apparently did not question other purchases the

Respondent made on that same day in the amounts of \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] at other businesses. It is not unreasonable that the Respondent did not know her remaining balance of FAP benefits on January 19, 2013, at 3:41 pm, and therefore chose to make three separate purchases instead of one purchase.

The Department alleges that all of Respondent's transactions that exceeded \$25 in a single day were considered to be FAP trafficking. On ten occasions, the Respondent made purchases in a single day that exceeded \$ [REDACTED] for a total of \$ [REDACTED] of the \$ [REDACTED] of alleged trafficked transactions. The Respondent's highest single day total at this business was \$ [REDACTED] on October 19, 2013, in three separate transactions over an 11 hour 22 minute period. While these purchases exceed the average food assistance purchase at this business, this Administrative Law Judge does not find them to be unreasonable considering the known inventory.

Based on the evidence submitted by the Department, the Respondent used her FAP benefits to make purchases totaling \$ [REDACTED] from January 1, 2013, through August 31, 2014. The evidence shows that the Respondent used these benefits in 372 individual transactions for an average purchase amount of \$ [REDACTED]. The average transaction by the business alleged to have trafficked in FAP benefits was \$ [REDACTED] during the same period. Based on the known inventory of this business, this Administrative Law Judge finds that the Department has presented insufficient evidence to establish that any purchase at this business exceeding \$25 in a single day is clear and convincing evidence of FAP trafficking.

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.*

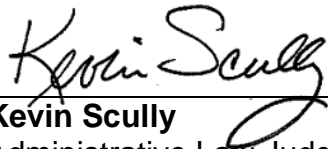
This Administrative Law Judge finds that the Department has failed to present clear and convincing evidence that the Respondent engaged in the trafficking of her FAP benefits. The Department did not present any evidence supporting a finding that the Respondent purchased items that she was not authorized to use FAP benefits to purchase. The Department did not present any evidence supporting a finding that the Respondent received cash in exchange for her FAP benefits. This Administrative Law Judge finds that the evidence is not sufficiently direct and weighty that a conclusion can be drawn that the Respondent could not have made purchases in the amounts she did from the known inventory of the business suspected of trafficking the food assistance.

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

KS/las



Kevin Scully
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

DHHS

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]

Respondent

[REDACTED]