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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]

Date Mailed: October 19, 2016
MAHS Docket No.: 16-005816
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" or "MDHHS"), 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 October 13, 2016, from Lansing, Michigan. [REDACTED], Regulation Agent of the Office of Inspector General (OIG), represented the Department. 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 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 requested a hearing on or about January 22, 2016, to establish that Respondent received an OI of benefits as a result of 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 issued an Electronic Benefit Transfer (EBT) card (a.k.a. "Bridge card") with a secret four-digit personal identification number (PIN). Respondent was aware that he must keep his EBT card secure and not allow others to have his PIN or to use his card. Respondent was aware that he must contact the Department if his EBT card is lost or stolen. [Exh. 1, pp. 19-34].
5. Respondent was aware of the responsibility to report changes as required by applicable Department policy and/or law.
6. From July 21, 2015, through January 22, 2016, Respondent has been incarcerated at the [REDACTED]. [Exh. 1, p. 9]. Respondent's EBT card was used from July 25, 2015, through January 18, 2016. [Exh. 1, pp. 10-13].
7. Respondent did not report that he had been incarcerated and did not report that his EBT card had been lost or stolen.
8. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill the above requirements.
9. The Department's OIG indicates that the time period it is considering the fraud period is from July 25, 2016, to January 18, 2016 (fraud period).
10. 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.
11. The Department contends that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED].
12. This was Respondent's first alleged FAP IPV.
13. 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) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. 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.

See BAM 720, p. 12.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. 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.*

In this case, the Department alleges that Respondent committed an IPV when he permitted his EBT card to be used while he was incarcerated. According to the OIG Agent, Respondent failed to timely and properly report to the Department that he was incarcerated and allowed a third party to use his EBT card while he was incarcerated. The OIG Agent further testified that Respondent did not keep his PIN secure and provided his PIN to a third party and/or allowed a third party to use his EBT card without authorization. The OIG Agent testified that at no time did Respondent notify the Department that his EBT card was lost or had been stolen. Respondent did not appear at the hearing.

Department policy requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (7-1-2015), pp. 10-11. Specifically, they must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

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 record shows that Respondent's EBT card was used without authorization while he was incarcerated in the [REDACTED]. [Exh. 1, pp. 10-13]. The clear and convincing evidence on the whole record shows that the Department provided Respondent with an informational booklet that describes the rules pertaining to the proper use of an EBT card for FAP benefits. The evidence shows that Respondent, like each FAP recipient who is issued an EBT card, was provided with a secret four-digit personal identification number (PIN). The informational booklet provided to Respondent also indicates that FAP recipients must keep the EBT card secure and must not allow unauthorized persons to have the PIN or to have access to the card. The instructions also clearly indicate that FAP recipients must contact the Department if the EBT card is lost or stolen. [Exh. 1, pp. 19-34].

Here, the clear and convincing evidence on the whole record shows that Respondent failed to properly and timely report to the Department that he had been incarcerated. In addition, Respondent also failed to report that his EBT card was lost or had been stolen. Respondent was responsible for keeping his EBT card safe and secure and was responsible to keep his PIN confidential. The clear and convincing evidence shows that Respondent failed to do so. In addition, Respondent was advised of his rights and responsibilities concerning program benefits as evidenced by his electronic signature on the online assistance application and/or redetermination which certifies that he was aware of these rights and responsibilities. Respondent had no apparent physical or mental impairment that limits his understanding or ability to fulfill these reporting

responsibilities. Accordingly, this Administrative Law Judge finds clear and convincing evidence on the whole record that Respondent committed an IPV because he intentionally failed to report information needed to make a correct benefits determination.

Disqualification

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is “[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor.” BPG, p. 20. 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.

A disqualification period is defined as, “[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist.” BPG, p. 20. 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 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.

Based on the above, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits. Accordingly, Respondent shall be personally disqualified from receiving FAP benefits for a period of 1 year.

Overissuance

The Department must also show that Respondent received an overissuance (OI) of FAP benefits. According to Department policy, 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.

As indicated above, the Department has shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may 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 did 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 be disqualified from FAP benefits for a period of 12 months.

CAP/mc



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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]