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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



Date Mailed: December 13, 2016
MAHS Docket No.: 16-010983
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 conference hearing was held on December 7, 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 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 May 10, 2016, 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 applied for and received FAP benefits from the Department. [Exh. 1, pp. 20-49].
4. Respondent's husband reported to the Department that Respondent had been selling her FAP benefits on her Electronic Benefit Transfer (EBT) card.
5. The Department investigated Respondent concerning the allegations.
6. On September 15, 2013, Respondent, using her EBT card, purchased candy from [REDACTED] in the amount of \$ [REDACTED] [Exh. 1, p. 16].
7. On October 13, 2013, Respondent, using her EBT card, purchased \$ [REDACTED] in candy, gum, chips, and other snacks from [REDACTED]. [Exh. 1, p. 17].
8. On January 13, 2014, Respondent purchased candy, gum, chips, and snacks from [REDACTED] using her EBT card in the amount of \$ [REDACTED] [Exh. 1, p. 18].
9. The OIG contends that Respondent purchased large amounts of bulk candy and engaged in large transactions using her EBT card between September 2013 and January 2014 that, based on the nature of the transactions, was used fraudulently and in a manner indicative of FAP trafficking. The OIG further argues that the receipts show that Respondent's transactions were consistent with a party store and not a single family with no other income or means to provide food for the household.
10. The OIG alleges that Respondent's EBT card was not reported lost or stolen during the fraud period. The OIG further alleges that Respondent had an extensive history of reporting her EBT card lost or stolen and did not replace the card until after the transactions at GFS. [Exh. 1, p. 66].
11. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food.
12. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to comply with the policies and/or laws that govern FAP benefits.
13. The Department's OIG indicates that the time period they are considering the fraud period is September 1, 2013, through January 31, 2014 (fraud period).
14. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.

15. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]
16. This was Respondent's second alleged FAP IPV.
17. 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the 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-.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.

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. 1.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 15. 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.15. If the court does not address disqualification in its order, the standard period applies. BAM 720, p.15.

Clear and Convincing Evidence

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 multiple high dollar purchases of bulk candy and/or snack foods using her EBT card. The OIG argues that the nature of the transactions showed that Respondent must have obtained additional food for her family through means other than with her EBT card. Respondent did not appear at the hearing to dispute the Department OIG Agent's contentions.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The central issue is whether the Department has shown, by clear and convincing evidence that Respondent engaged in conduct that meets the definition of trafficking. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

As indicated in the above Findings of Fact, Respondent purchased large amounts of candy, snacks, and related items from [REDACTED] between September 2013 and January 2014. The OIG argues that based on the nature of these transactions, Respondent's EBT card was used fraudulently and in a manner indicative of FAP trafficking. The OIG argues that, based on the receipts, the transactions were consistent with "a party store" and not indicative of purchases for a single family with no other income or means to

provide food for the household. In addition, the OIG contends that Respondent's pattern and history of reporting that her card had been lost or stolen is evidence of trafficking.

The Administrative Law Judge has reviewed the evidence of record and does not find clear and convincing evidence that Respondent was engaged in "the buying or selling of FAP benefits for cash or consideration other than eligible food" as defined by BAM 700. Certainly, Respondent's practice of purchasing bulk candy and snack items during the time period that her card had been reported stolen is suspicious behavior. However, simply because this activity raises suspicions, it does not necessarily meet the definition of trafficking. The Department has not shown that the transactions in this record demonstrate that Respondent either bought or sold FAP benefits for cash or other consideration other than eligible food. The evidence was not clear and convincing that Respondent fraudulently used, transferred, altered, acquired, or possessed coupons, authorization cards, or access devices; or redeemed or presented for payment coupons known to be fraudulently obtained or transferred. This record does show that Respondent made some purchases of unhealthy eligible food items such as candy and snacks, but it is not *per se* evidence of trafficking. Without more, there is no way for the Administrative Law Judge to determine whether Respondent obtained additional food for her family through other means.

As indicated above, the clear and convincing evidence standard is the most demanding standard applied in civil cases and is only 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. Here, the Department has shown suspicious transactions that involve Respondent's EBT card, but not necessarily transactions that meet the definition of FAP trafficking. Consequently, the OIG 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.

Here, the Department contends that this is Respondent's second FAP IPV. However, the Administrative Law Judge finds that the Department has not shown that an IPV has occurred. The Department also failed to include any evidence in this record to show that

Respondent had a first IPV concerning FAP benefits. In any event, the Department has not shown that Respondent was guilty of an IPV and; therefore, she cannot be disqualified from FAP benefits.

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. There are three different types of OIs: (1) agency errors, (2) client errors, and (3) CDC Provider errors. See BAM 700, pp. 4-7. An agency error OI is caused by incorrect action (including delayed or no action) by DHHS staff or department processes. BAM 700, p. 4. The Department will treat an OI due to excess assets as an agency error unless IPV caused it. 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. 5.

In this matter, the Department has not shown that Respondent received an OI of FAP benefits. Based on the above analysis, the evidence of record does not show that Respondent received more FAP benefits than she was eligible to receive. Because the Department has failed to establish that Respondent receive an OI of FAP benefits, the Department may not recoup the alleged OI.

Consequently, 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 resulting in an overissuance.

DECISION AND ORDER

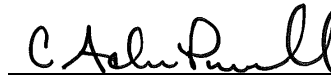
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

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 related to the instant matter.

It is FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits related to the instant matter.

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]