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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: October 20, 2016
MAHS Docket No.: 16-012282
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Health and Human Services' ("Department" or "MDHHS") request for a hearing. After due notice, a telephone hearing was held on October 13, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] 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 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. Respondent was a recipient of FAP benefits.
2. The Department's OIG filed a hearing request on or about July 26, 2016, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

3. In 2015, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) conducted an investigation of the [REDACTED], located at [REDACTED]. [Exh. 1, pp. 9-11].
4. The [REDACTED] was a convenience store with a limited supply of food items, one cash register, no optical scanner, no shopping carts or baskets and limited counter space. The [REDACTED] also sold ineligible items such as alcohol, lottery tickets, pet food, automotive supplies, and household items. [Exh.1, pp. 14-22].
5. The USDA-FNS investigation revealed that records from the [REDACTED] showed Electronic Benefit Transfer (EBT) transactions that demonstrated a pattern of unusual, irregular, and inexplicable activity for the size, inventory, and layout of the store. [Exh. 1, pp. 22-66].
6. Following the investigation, the USDA-FNS determined that the [REDACTED] was engaged in trafficking of FAP benefits during the months of March 2015 through August 2015. [Exh. 1, p. 23].
7. In March 2016, the USDA permanently disqualified the [REDACTED] from participation in the Supplemental Nutrition Assistance Program ("SNAP" a.k.a. FAP).
8. The Department contends that Respondent's EBT card was used at the [REDACTED] and that, based on the nature of the transactions, was used fraudulently and in a manner indicative of FAP trafficking.
9. The Department's OIG indicates that the time period they are considering the fraud period is March 1, 2015, through August 31, 2015 (fraud period).
10. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
11. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED].
12. The OIG has requested that Respondent be disqualified from receiving FAP benefits and that 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.
14. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food.

15. 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.

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.

The OI amount for trafficking-related IPV 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.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.*

Here, the Department's OIG Agent contends that Respondent is guilty of an IPV because she engaged in multiple high dollar purchases at a store that was found to be engaged in FAP trafficking during the alleged fraud period. 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 [REDACTED] ("the store") 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 USDA-FNS investigation report which indicated that the store was a small convenience store with limited eligible food stock items and was not equipped with an optical scanner, bags, boxes, baskets or carts for patrons to carry out eligible food items. [Exh. 1, pp. 9-66].

The USDA-FNS also found that the store lacked sufficient eligible food items in its inventory to support high dollar transactions and/or transactions ending in .89 or .99 cents. [Exh. 1, pp. 9-66]. As a result, the store was permanently disqualified from participating in the SNAP/FAP program. [Exh. 1, pp. 9-66].

The record contained a copy of an IG-312 EBT History, which revealed that Respondent's Michigan-issued EBT card was used at the store during the fraud period. [Exh. 1, pp. 67-69]. Based on this record, the evidence showed that Respondent conducted multiple transactions on the same day and these transactions were minutes apart. [Exh. 1, pp. 67-69]. These records show that Respondent engaged in a several different transactions each of which ended in the same amount. [Exh. 1, pp. 67-69]. The evidence is clear and convincing that Respondent engaged in transactions that showed she bought or sold FAP benefits for cash or consideration other than eligible food. BAM 700, p. 1. Based on the totality of the record, this Administrative Law Judge finds that the Department has established, by clear and convincing evidence that Respondent engaged in FAP trafficking during the fraud period. Consequently, the Department has established that Respondent committed an IPV with respect to the FAP program.

Respondent received a written booklet which contained a set of instructions that detailed a FAP recipient's rights and responsibilities. [Exh. 1, pp. 72-89]. These instructions clearly indicate that usage of FAP benefits or EBT cards to purchase anything other than food or seeds and plants to grow your own food for your household may result in a civil or criminal action. [Exh. 1, p. 72].

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. In this matter, based on the above the Department has shown by clear and convincing evidence that Respondent received an OI of FAP benefits due to illegal FAP trafficking. According to BAM 700, the Department may recoup this OI.

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 has shown that Respondent was guilty of her first IPV concerning FAP benefits.

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 resulting in a total \$ [REDACTED] OI. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

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

1. Respondent did commit an IPV due to FAP trafficking.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP 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]