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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 20, 2016
MAHS Docket No.: 16-013642
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 hearing was held on December 14, 2016, from Lansing, Michigan. [REDACTED] [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 July 13, 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 was a recipient of FAP benefits issued by the Department. [Exh. 1, pp. 10-17].
4. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food. [Exh. 1, pp. 10-17].
5. Respondent had 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. [Hearing Testimony].
6. On or about August 5, 2015, Respondent was arrested and incarcerated in the [REDACTED] for a period in excess of 30 days. [Exh. 1, pp. 18-21].
7. The Department's OIG alleges that Respondent had a household of one and that no one else was authorized to use his Electronic Benefit Transfer (EBT) card and that his EBT card was used during the time he was incarcerated.
8. The Department's OIG indicates that the time period they are considering the fraud period is August 19, 2015, through March 27, 2016 (fraud period).
9. During the alleged fraud period, Respondent is alleged to have trafficked \$ [REDACTED] in FAP benefits.
10. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED] [Exh. 1, pp. 24-25].
11. This was Respondent's first alleged FAP IPV.
12. A notice of hearing was mailed to Respondent at the last known address and was 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.

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.

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 his EBT card was used while he was incarcerated in the [REDACTED]. 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 following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

Based upon the above Findings of Fact, this Administrative Law Judge finds that the Department's OIG Agent failed to establish with clear and convincing evidence that Respondent was guilty of FAP trafficking. Although Respondent's EBT card was used during the time he was incarcerated, it does not mean that he is guilty of trafficking. The Department must establish by clear and convincing evidence that Respondent either bought or sold FAP benefits for cash or consideration other than eligible food. Here, there is no evidence that Respondent engaged in any transactions involving FAP benefits while he was incarcerated. While the evidence shows that Respondent's EBT card was used, there is not clear and convincing evidence that he 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 FAP coupons known to be fraudulently obtained or transferred. The evidence is insufficient to show that Respondent was involved when his EBT card was used during his incarceration any more than his PIN number was stolen by a third party. In addition, the evidence in this record is insufficient to show that Respondent acted intentionally or that he was engaged in 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 he 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 not shown that Respondent was guilty of his first IPV concerning FAP benefits and; therefore, the Department may not impose FAP disqualification.

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, 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. Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. 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 shown that Respondent received an OI of FAP benefits. Here, Respondent failed to report that he was incarcerated and that he could no longer use his EBT card. Respondent did not act intentionally, but he was negligent by failing to timely notify the Department of his change in status. This is a client error, but is not an IPV. The client error occurred when Respondent failed to report that he was incarcerated, which led to an OI of FAP benefits. [Exh. 1, pp. 24-25]. According to BAM 700, the Department may recoup this OI.

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. However, the Department has shown that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]

DECISION AND ORDER

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

1. The Department did **not** establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits due to trafficking.

THEREFORE, IT IS ORDERED that Respondent **shall not** be disqualified from FAP benefits arising out of the instant matter.

2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED] due to a client error.

IT IS FURTHER ORDERED that the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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]