RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: March 28, 2017
MAHS Docket No.: 16-014769
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 March 22, 2017 from Lansing, Michigan. [redacted] Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent appeared in person and provided testimony.

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 investigated [redacted] who was a FAP recipient that owned and operated a food stand known as [redacted] sold hot dogs, burgers, BBQ, Philly Beef Sandwiches, French Fries, deep fried catfish and other items. The investigation revealed that for several years [redacted] purchased Electronic Benefit Transfer (EBT) cards from other FAP recipients in exchange for

cash. [redacted] would often visit [redacted] ([redacted] in [redacted] Michigan and request the following bulk items that were not carried in stock and were only available through a special order: Beef Stk Slcd Ckd Bulk 4 (item last four digits #8600) and Catfish Filets 7-9 oz. (item last four digits #4-2.5). [redacted] retained all of these special orders under [redacted] name. [Department Exhibit 1, pp. 4-5].

2. [redacted] informed the Department that [redacted] would use multiple EBT cards to make purchases. According to [redacted] would call the store and place the orders for his food stand and arrange for third parties to visit the store, purchase, and then pick up the items reserved for [redacted] using an EBT card. [Dept. Exh. 1, pp. 4-5].

3. During the investigation, the Department obtained admissions from multiple FAP recipients who admitted that they would purchase items for [redacted] at [redacted] using their EBT cards in exchange for cash. These individuals were aware that the special order items and other items were purchased at [redacted] for [redacted] and his food stand. The Department, using an EBT cross-reference search, also learned that approximately 50 FAP recipients purchased these items for [redacted] [Dept. Exh. 1, pp. 4-5].

4. Respondent was a recipient of FAP benefits issued by the Department. [Exh. 1, pp. 42-45].

5. The Department's OIG contends that Respondent's EBT card was used at [redacted] for [redacted] and that, based on the nature of the transactions, was used fraudulently and in a manner indicative of FAP trafficking. The Department obtained evidence (i.e., receipts from [redacted] that showed on May 3, 2012, August 3, 2012, August 15, 2013, September 4, 2013, October 4, 2013, November 3, 2013, December 3, 2013, February 3, 2014, May 3, 2014, May 4, 2014, April 3, 2014, May 3, 2014, July 19, 2014, Respondent used his EBT card, along with other individual FAP recipients, to purchase special order sliced beef steak, catfish fillets and other bulk items for [redacted] food stand. Respondent, in conjunction with others, used EBT cards to purchase these items at [redacted] for [redacted] Respondent spent a large percentage of his monthly FAP allotment for the transactions at GFS. [Dept. Exh. 1, pp. 4-5, 46-52, 56-69 and 70-72].

6. The Department's OIG filed a hearing request on or about August 30, 2016, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

7. The OIG has requested that Respondent be disqualified from receiving program benefits.

8. Respondent was aware that it was unlawful to buy or sell FAP benefits for cash or consideration other than eligible food.

9. 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.

10. The Department's OIG indicates that the time period they are considering the fraud period is May 1, 2012 through July 31, 2014 (fraud period).

11. During the alleged fraud period, Respondent is alleged to have trafficked $[redacted] in FAP benefits.

12. The Department alleges that Respondent received an OI of FAP benefits in the amount of $[redacted]

13. This was Respondent's first FAP IPV.

14. 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 who knowingly uses, transfers, acquires, alters, purchases, possesses, presents for redemption or transports food stamps or coupons or access devices other than as authorized by the food stamp act is guilty of trafficking. See 7 U.S.C. §§ 2011 to 2030, BEM 203, (10-1-2015) pp. 2-3, MCL 750.300a. This includes voluntary transfer of

Electronic Benefit Transfer (EBT) or "Bridge" cards and/or FAP benefits to any person outside of the FAP group. FAP recipients cannot sell, trade, or give away their FAP benefits, Personal Identification Number (PIN) or Michigan EBT card. FAP benefits must be used by household members to purchase eligible food for the household. 7 C.F.R. §274.7.

FAP recipients are precluded from purchasing eligible food items on credit and paying for the items using their EBT or Bridge card. FAP benefits shall not be used to pay for any eligible food purchased prior to the time at which the EBT card is presented to the authorized retailer or used to pay for eligible food in advance of the receipt of the food. 7 C.F.R. §274.7.

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, 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. 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. 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 he engaged in FAP trafficking by unlawfully purchasing items for [redacted] using an EBT card in exchange for cash or other consideration during the alleged fraud period. Respondent appeared at the hearing and admitted to all of the Department OIG's allegations.

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.

Based upon the above Findings of Fact, this Administrative Law Judge finds that the Department OIG Agent's testimony to be credible and consistent with the information contained in the contemporaneous investigation report. In addition, the record shows that Respondent received documentation which contained instructions regarding the lawful and proper use of the EBT card, PIN and FAP benefits. [Dept. Exh. 1, pp. 73-94]. Based on the above Findings of Fact, the Department has shown by clear and convincing evidence that Respondent's EBT card was used at [redacted] to purchase special order items for [redacted] during the fraud period. This is supported by the receipts and other evidence in the record. Respondent was engaged in fraudulent transactions at GFS during the fraud period. The clear and convincing evidence shows that Respondent obtained cash or other consideration in exchange for the use of the EBT card at [redacted] Accordingly, the evidence shows that Respondent knowingly used, transferred, acquired, altered, purchased, possessed, presented for redemption or transported FAP benefits or an EBT/Bridge card in violation of the federal food stamp act.

Therefore, this Administrative Law Judge finds that the evidence is clear and convincing that Respondent was guilty of FAP trafficking during the fraud period. Accordingly, the Department OIG Agent has established that Respondent committed an IPV 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. 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.

An individual who is found guilty of a FAP IPV is 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 Findings of Fact and Conclusions of Law, the Department has shown that Respondent was guilty of his first IPV concerning FAP benefits. The Department has also shown that Respondent received an OI of FAP benefits. According to BAM 700, the Department may recoup this OI.

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. The Department has also shown that this is Respondent's first FAP IPV. 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 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]