

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Respondent

Reg. No: 2009-21804

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 8, 2009

Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, an in-person hearing was held on December 8, 2009. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e). MAC R 400.3130(5) or MAC R 400.3178(5).

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether respondent received an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

(1) The department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of Food Assistance Program benefits received by respondent as the result of respondent having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving benefits for a period of one year.

(2) Respondent signed an Assistance Application (DHS-1171) on May 30, 2007, acknowledging that she understood her failure to give timely, truthful, and complete and accurate wage/employment information could result in a civil or criminal action or an administrative claimant against her. (Department Exhibit pp. 19-25)

(3) Respondent failed to report employment earnings from [REDACTED] beginning December 18, 2006.

(4) Respondent received Food Assistance Program benefits for the period of February 2007 through November 2007.

(5) During the period of February 1, 2007 through November 30, 2007 respondent was entitled to receive \$144 in Food Assistance Program benefits. Respondent actually received \$1,564 in benefits resulting for an overissuance of \$1,420.

(6) This is the respondent's first Food Assistance Program Intentional Program Violation.

(7) Respondent's last known address is [REDACTED].

(8) Notice of disqualification hearing was sent to respondent on July 7, 2009 with a hearing date of August 12, 2009 and a second notice was sent to respondent on November 6, 2009 for a hearing date of December 8, 2009. Food Assistance Program benefit budgets at pages 30-50 indicate the amount of overissuance for each month in question.

(9) On November 28, 2007, the department caseworker received a verification of employment form which indicated that respondent began her employment December 18, 2006 and was employed from December 18, 2006 through November 15, 2007. (pp. 27-28)
Respondent was clearly and totally aware of her responsibility to report all household income to the department.

(10) Respondent was physically and mentally capable of performing her reporting duties.

(11) Respondent has not committed any previous Intentional Program Violations for Food Assistance Program benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as the result of an Intentional Program Violation and the department has asked that respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

When a client group receives more benefits than they are entitled to receive, the Department of Human Services must attempt to recoup the overissuance. BAM, Item 700, p. 1. An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. For Food Assistance Program benefits, an overissuance is also the amount of benefits trafficked (traded or sold). BAM, Item 700, p. 1.

The Department of Human Services must inform clients of their reporting responsibilities and act on the information reported within the standard of promptness. During the eligibility determination and while the case is active, respondents are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, and
- . Explanation at application/redetermination interviews, and
- . Client notices and program pamphlets.

The Department of Human Services must prevent overissuances by following BAM 105 requirements and by informing the client or authorized representative that they are required by law to give complete and accurate information about their circumstances and that they are required to promptly notify the Department of Human Services of all changes in circumstances within 10 days. Food Assistance Program simplified reporting groups are required to report only when the group's actual gross monthly income exceeds the simplified reporting income limit for their group size.

Incorrect, late reported or omitted information causing an overissuance can result in cash repayment or benefit reduction and a timely hearing request can delete a proposed benefit reduction. A suspected Intentional Program Violation means an overissuance 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 their reporting responsibilities.

Intentional Program Violation is suspected when there is 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, Item 720, p. 1.

The federal Food Stamp regulations read in part:

Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

The amount of the overissuance is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. The department caseworker is required to disqualify an active or inactive recipient who is found by a court or hearing decision to have committed an Intentional Program Violation. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM, Item 720, pp. 12-13. The standard disqualification period is used in all instances except when a court orders a different period. Apply the following disqualification periods to recipients determined to have committed Intentional Program Violation:

- (1) One year for the first Intentional Program Violation.
- (2) Two years for the second Intentional Program Violation.
- (3) Lifetime for the third Intentional Program Violation.
- (4) Ten year disqualification for concurrent receipt of benefits. (PAM, Item 720, p. 13)

In this case, the department has established that respondent was aware of the responsibility to report all income and employment to the department. Respondent had no apparent physical or mental impairment that limited the understanding or ability to fulfill the reporting responsibilities. Department policy requires that clients are to report all changes that could potentially effect eligibility or benefit amounts within 10 days of when the client is aware of the change. BAM, Item 105. Clearly, this would include earned income. Respondent completed an application dated May 30, 2007. According to the verification of employment form, respondent was already working December 28, 2006 and continuously worked until at least November 15, 2007. Respondent failed to disclose her income and the fact that she was already working.

Department policy indicates that the amount of the overissuance is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive.

BAM, Item 720, p. 6. In this case, respondent received Food Assistance Program benefits in the amount of \$1,564 from February 1, 2007 through November 30, 2007. She was entitled to receive \$144 in Food Assistance Program benefits. Thus, the overissuance amount is \$1,420.

This Administrative Law Judge therefore concludes that the department has shown by clear and convincing evidence that respondent committed a first Intentional Program Violation of the Food Assistance Program resulting in a \$1,420 overissuance from February 1, 2007 through November 30, 2007. Consequently, the department's request for a Food Assistance Program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides that respondent committed a first Food Assistance Program Intentional Program Violation.

Therefore, the department's assessment is AFFIRMED. It is ORDERED that:

- (1) Respondent shall be personally disqualified from participation in the Food Assistance Program for one year. The disqualification period shall begin to run immediately as of the date of this order.
- (2) Respondent is responsible for full restitution of \$1,420 in Food Assistance Program overissuance caused by this Intentional Program Violation (IPV) and the department may proceed with a debt collection action.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 10, 2010

Date Mailed: March 10, 2010

2009-21804/LYL

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

LYL/vmc

cc:

