

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.: 2009-22765
Issue No.: 3052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 22, 2009
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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 Service (Department) request for a disqualification hearing. After due notice, a telephone hearing was held on December 10, 2008. The Respondent did not appear. The Department was represented by [REDACTED], Agent, Office of Inspector General (OIG).

ISSUES

- (1) Did Respondent commit an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
- (2) Is the Department entitled to recoup \$1,794.00, in FAP benefits?
- (3) Should the Respondent be disqualified from FAP benefits for ten years?

FINDINGS OF FACT

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

- (1) On April 15, 2009, the Department's OIG filed a hearing request to establish Respondent allegedly intentionally withheld information and received an over issuance of benefits; and the Department is requesting to recoup \$1,794.00, in FAP benefits for the period of June 1, 2008, through August 31, 2008.
- (2) On October 11, 2007, the Respondent signed an application/re-determination and acknowledged the obligation to report change in circumstances that might affect his/her benefits. (Department's exhibit pp. 11-18).
- (3) On March 9, 2009, the Department received notice that the Respondent was receiving benefits from two states, Michigan and Colorado), at the same time. (Department exhibit pp. 21 - 24).
- (4) The Respondent did not report a physical or mental condition that may limit his/her understanding or ability to fulfill the employment and income reporting responsibilities.
- (5) The Department mailed a notice of this hearing to the Respondent at the last known address: [REDACTED]; and the mail was not returned.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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 administers the FAP program pursuant to MCL 400.10, 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 requested a disqualification hearing; to establish an over issuance of benefits; to recoup the over issuance, and the department is seeking a disqualification

of the Respondent barring him from receiving benefits. The department's manuals provide the relevant policy statements and instructions for department caseworkers. In part, the policies provide:

BENEFIT OVERISSUANCES: PAM 700, p. 1

DEPARTMENT POLICY

All Programs

When a customer group receives more benefits than they are entitled to receive, the department must attempt to recoup the over issuance (OI).

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

An **over issuance (OI)** is the amount of benefits issued to the customer group in excess of what they were eligible to receive.

Over issuance Type identifies the cause of an over issuance.

Recoupment is a department action to identify and recover a benefit over issuance. PAM 700, p.1.

PREVENTION OF OVERISSUANCES

All Programs

The department must inform customers of their reporting responsibilities and act on the information reported within the standard of promptness.

During eligibility determination and while the case is active, customers are repeatedly reminded of reporting responsibilities, including:

- Acknowledgments on the application form, **and**
- Your explanation at application/re-determination interviews, **and**
- Customer notices and program pamphlets.

The department must prevent OIs by following PAM 105 requirements and by informing the customer or authorized representative of the following:

- Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- Applicants and recipients are required by law to promptly notify the department of any changes in circumstances within 10 days.
- Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- A timely hearing request can delete a proposed benefit reduction. If the department is upheld or the customer fails to appear at the hearing, the customer must repay the OI.

Record on the application the customer's comments and/or questions about the above responsibilities. PAM 700, p.2.

INTENTIONAL PROGRAM VIOLATION

SUSPECTED IPV

All Programs

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The customer intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; **and**
- The customer was clearly and correctly instructed regarding his or her reporting responsibilities; **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his reporting responsibilities.

Intentional Program Violation (IPV) is suspected when the customer has **intentionally** withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There must

be clear and convincing evidence that the customer acted intentionally for this purpose. PAM 720, p.1

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

The amount of the OI is the amount of benefits the group actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents the department during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed FIA-826 or FIA-830 is obtained, and correspondence to the customer is not returned as undeliverable, or a new address is located.

OIG requests IPV hearings for cases involving:

1. Prosecution of welfare fraud or . . . is declined by the prosecutor for a reason other than lack of evidence, **and**

The total OI amount of FIP, SDA, CDC, MA and FAP programs combined is \$1,000.00 or more or

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- is found by a court or hearing decision to have committed IPV, **or**
- has signed an FIA-826 or FIA-830, **or**
- is convicted of concurrent receipt of assistance by a court, **or**

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.

**Standard Disqualification Periods PAM 720, pp. 12, 13
FIP, SDA and FAP**

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods** in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- One year for the first IPV
- Two years for the second IPV
- Lifetime for the third IPV

The federal Food Stamp regulations read in part:

(c) Definition of **intentional program violation**. For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional program violation, intentional program violations 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 related to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's. 7 CFR 273.16(c).

The federal Food Stamp regulations read in part:

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c) (6).

In addition:

DUPLICATE RECEIPT OF ASSISTANCE

FIP

A person is disqualified for a period of 10 years beginning with the date of conviction if convicted in court of having made a fraudulent statement or representation regarding his residence in order to receive assistance simultaneously from two or more states under any of the following programs:

State programs funded under Title IV-A of the Social Security Act (known as Temporary Assistance for Needy Families (TANF) in the Social Security Act; known as FIP in Michigan);

MA, FAP, or SSI.

FAP

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. (PEM 203, p. 1).

In this case, the Department has established by clear and convincing evidence that Respondent knowingly withheld the information about his residence. The evidence shows that the Respondent, beginning on or about February 23, 2007, through May 23, 2007, was receiving FAP benefits in Michigan and Indiana.

All Programs

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The customer intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; **and**
- The customer was clearly and correctly instructed regarding his or her reporting responsibilities; **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his/her reporting responsibilities. PAM 720, p. 1.

RESIDENCE

FIP, SDA and AMP

A person is a resident if he:

Is not receiving assistance from another state; **and**
Is living in Michigan, except for a temporary absence, and
Intends to remain in the state permanently or indefinitely.

CDC and FAP

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if he has no intent to remain in the state permanently or indefinitely. Eligible persons may include:

Persons who entered the state with a job commitment or to seek employment; and Students (For FAP **only**, this includes students living at home during a school break.)

MA Only (non-institutionalized persons)

A person is **not** a Michigan resident for any month in which he received an SSI State Supplement Payment from another state.

A person is a Michigan resident if either of the following apply:

He lives in Michigan, except for a temporary absence, **and** intends to remain in Michigan permanently or indefinitely. If the client indicates intent to remain in Michigan, but the client's official BCIS documents indicate a **temporary or time-limited period** to the visit, the client does **not** meet the intent to remain requirements, unless the client verifies that official steps are being taken with BCIS to apply for lawful permanent resident status. See PEM 225.

He or a member of his MA fiscal group has entered the state of Michigan for employment purposes, and

Has a job commitment, or
Is seeking employment.

A person who claims that he or a member of his MA fiscal group has entered the state for employment purposes must verify that they have a job commitment or are seeking employment. If the official BCIS documents indicate a status that does not permit the person to work, the BCIS documents are verification that the person did **not** enter Michigan for purposes of employment. (PEM 220, pp. 1-2)

Here, the Respondent was collecting FAP benefits in Michigan and Colorado at the same time.

The Department is entitled to recoup the amount issued in excess of what the Respondent was eligible to receive. The undersigned reviewed the FAP budgets presented and the over-

issuance amount of FAP benefits they show; and finds the Department's FAP budget computations to be correct. Respondent owes \$1, 794.00 in FAP benefits. The Department is entitled to recoup this amount.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

The evidence does establish that the Respondent committed a first IPV of the FAP program and was receiving FAP benefits from two states at the same time. The Department's request for disqualification from the FAP program for ten years is GRANTED.

The Department is entitled to recoup over issuance of FAP benefits a total of \$1,794.00.

/s/
Michael J. Bennane
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 09/01/09

Date Mailed: 09/02/09

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.

MJB/jlg

cc:

