

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-30961
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 7, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon a request from the Department of Human Services (Department) to schedule a hearing for an alleged intentional program (IPV). Respondent did not appear at the hearing, which was held on Wednesday, April 7, 2010, in Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the Respondent commit a Food Assistance Program (FAP) intentional program violation?

FINDINGS OF FACT

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

(1) The Respondent received FAP benefits from June 1, 2006 through May 31, 2007. Department Exhibit 23 – 24.

(2) Respondent was aware of the responsibility to report all household employment and income to the Department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Department Exhibit 13.

(3) Respondent was employed and received earnings during the period of June 14, 2006 through July 27, 2007. Department Exhibit 15 – 18.

(4) Respondent received unemployment compensation benefits during the period of December 3, 2005 through April 28, 2007. Department Exhibit 19 – 22.

(5) Respondent did not fully report all employment and income to the Department.

(6) Respondent failed to report income and earnings for the purposes of receiving benefits that respondent was not entitled to receive.

(7) As a result, Respondent received overissuances in the amount of [REDACTED] under the FAP program. Department Exhibit 24 – 26.

(8) This was Respondent's first intentional program violation.

(9) A notice of the disqualification hearing was mailed to the Respondent at the last known address, and it was returned by the U.S. Post Office as undeliverable.

(10) Prosecution of the Respondent was denied on March 16, 2009, and the case was referred back to the Department for recoupment. Department Exhibit 4.

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 (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 Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

When a customer client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700. A suspected intentional program violation means an overissuance where:

- 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.

The Department suspects an intentional program violation when the client 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 client acted intentionally for this purpose. BAM 720.

The Department's Office of Inspector General processes intentional program hearings for overissuances referred to them for investigation. The Office of Inspector General represents the Department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when

- benefit overissuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, and

- the group has a previous intentional program violation, or
- the alleged IPV involves FAP trafficking, or
- the alleged fraud involves concurrent receipt of assistance,
- the alleged fraud is committed by a state/ government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program benefits. 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 720.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. 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 concurrent receipt of benefits. BAM 720.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).”

This is the Respondent’s first violation.

In this case, the Respondent intentionally failed to report earned income on the application for FAP benefits he signed on June 20, 2006. Respondent’s signature on this document certifies that he was aware that fraudulent participation in FAP could result in criminal or civil action or administrative claims. As a result of Respondent’s failure to report income, he received an overissuance and the Department is entitled to recoup [REDACTED]

The Department properly requested that the Respondent be disqualified from participation in the FAP program for one year.

DECISION AND ORDER

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

1. Respondent committed a first intentional program violation of the Food Assistance Program, and the Department is entitled to recoup a FAP overissuance of [REDACTED].
2. Respondent is ordered to reimburse the Department for the overissuance.
3. The Respondent is disqualified from participation in the Food Assistance Program for one year.

/s/

Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 9, 2010

Date Mailed: April 13, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

KS/vmc

cc:

[REDACTED]