

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: 2009-33578
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 20, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 20, 2009. Claimant was present and testified. Mark Logan, FIM, and Debra Echtenaw, OIG agent, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (department) properly reduce claimant's Food Assistance Program (FAP) allotment due to member disqualification and recoupment?

FINDINGS OF FACT

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

- (1) Claimant was an ongoing FAP recipient in a household of three persons.
- (2) Claimant had obligations for shelter and utility expenses.
- (3) On June 1, 2009, claimant signed a Intentional Program Violation Repayment Agreement agreeing that she received an overissuance of FAP benefits during the period of

June 1, 2006 to November 30, 2006 because she failed to timely report income and employment changes. The form also included the terms of repayment for recoupment of the overissuance.

(Department Exhibit 1, pgs. 11-12)

(4) On June 1, 2009, claimant also signed a Disqualification Consent Agreement for a one year disqualification from the FAP program. (Department Exhibit 1, pg. 13)

(5) The department removed claimant from the FAP group and re-calculated the budget determining that after a deduction for the recoupment, claimant's household was entitled to a monthly FAP allotment of \$39. (Department Exhibit 1, pg. 3)

(6) Claimant filed a hearing request on August 14, 2009 to contest the FAP determination.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals.

When a client receives more benefits than entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 725. 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. A suspected Intentional Program Violation (IPV) means an OI exists for which all three of the following conditions exist:

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

IPV 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 700.

A client is determined to have committed an IPV by a court decision, an administrative hearing decision, or the client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. BAM 700 and 720. An active or inactive recipient is disqualified if found by a court or hearing decision to have committed IPV, or has signed a DHS-826 or DHS-830, or is convicted of concurrent receipt of assistance by a court, or for FAP, is found by SOAHR or a court to have trafficked FAP 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. The standard disqualification period for a first IPV is 12 months. BAM 720.

In the present case, the IPV was established when claimant signed the DHS 830 Disqualification Consent Agreement and DHS 4350 Intentional Program Violation Repayment Agreement on June 1, 2009. (Department Exhibit 1, pgs. 11-13) By signing these documents, claimant agreed that she received an overissuance of FAP benefits during the period of

June 1, 2006 to November 30, 2006 because she failed to timely report income and employment changes. The form also included general terms of repayment for recoupment of the overissuance and the one year disqualification period. (Department Exhibit 1, pgs. 11-13)

Claimant testified she utilized a deaf interpreter during discussions with the department and did not correctly understand the impact signing these forms would have on her household's ongoing FAP benefits. Claimant testified she believed the FAP benefits would be reduced by \$39 a month, not that the ongoing FAP allotment would be \$39 a month. While claimant may have misunderstood the resulting impact on her household's FAP benefits, she did have the opportunity to read and review the DHS 830 Disqualification Consent Agreement and DHS 4350 Intentional Program Violation Repayment Agreement before signing them. The forms clearly indicated that the overissuance of benefits would be recouped and that she would be subject to a one year disqualification period. (Department Exhibit 1, pgs. 11-13) The DHS 4530 Intentional Program Violation Repayment Agreement also discussed the repayment terms including a clear description that active FAP benefits would be reduced by 20% of the monthly benefit or \$20 per month, whichever is higher under administrative recoupment. (Department Exhibit 1, pg. 12) Claimant signed the forms June 1, 2009 indicating her agreement that she committed an IPV by failing to timely report the income/employment changes to the department resulting in an overissuance of benefits that would be recouped and that she would be subject to a one year disqualification period.

On July 16, 2009, the department issued an Intentional Program Violation Client Notice indicating claimant would be disqualified from receiving FAP benefits from August 1, 2009 through July 31, 2010 and that the ongoing household FAP benefits will be reduced to \$39 after removal of the group member and starting administrative recoupment. (Department Exhibit 1, pg. 6) Under BAM 725, FAP benefits are reduced for recoupment by a percentage of the

monthly FAP entitlement. (The entitlement amount is the amount of FAP a group would receive if any IPV disqualified members were included in the eligible group.) The standard administrative recoupment percentage for a FAP IVP is 20% or \$20, whichever is greater.

BAM 725.

Review of the August 2009 FAP budget shows that \$49 is being deducted from the ongoing FAP benefits for administrative recoupment. (Department Exhibit 1, pg. 3) This is 20% of \$247, the monthly FAP allotment that claimant's household was receiving prior to her removal as a group member, which was the only change made to the August 2009 budget.

Claimant testified that the figures used in the August 2009 FAP budget are correct except for the income. Claimant testified that the income figure used in the budget is not accurate because the child support is included in the household budget. Claimant testified the child support income she receives does not remain in her household each month. The child support is for a daughter that lives with claimant's mother. Claimant testified that she therefore gives the child support money to her mother each month, and it does not remain in the household. The hearing record was left open for 2 weeks for claimant to provide a statement from her mother or other verification that this child support money does not stay in her home. However, claimant did not provide any such documentation regarding the child support.

Based upon the foregoing facts and relevant law, it is found that the department properly removed claimant from the FAP group and began administrative recoupment from the ongoing FAP benefits, using the 20% standard set forth in policy. The ongoing FAP budget has been reviewed and the figures are correct based on the information available to the department, and no verification provided regarding the child support income not remaining in the household. Claimant may want to provide such documentation to the department so that the child support income could be excluded from future FAP budgets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly removed claimant from the FAP group and began administrative recoupment from the ongoing FAP benefits.

Accordingly, the department's determination is AFFIRMED.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 10, 2009

Date Mailed: November 12, 2009

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.

CL/cv

cc:

