

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: 2010-13152
Issue No: 3019; 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 17, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, an in-person hearing was held on Wednesday, February 17, 2010. The claimant personally appeared and testified on her own behalf.

ISSUE

Did the department properly cancel the claimant's Food Assistance Program (FAP) benefits as the result of a 24-month intentional program violation (IPV) disqualification?

FINDINGS OF FACT

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

- (1) The claimant was a recipient of FAP and CDC benefits.

(2) On July 20, 2005, a fraud investigation was initiated on the claimant based on a CDC program violation from October 2004 to June 2005 of 2,880 and a FAP program violation from October 2004 through November 2004 of \$20. (Department Exhibit 24-25)

(3) On October 31, 2005, the OIG agent did an investigation that claimant applied for public assistance and benefits were issues for which the claimant was not entitled where the department records reveal the claimant's failure to report. (Department Exhibit 18-21)

(4) On October 31, 2005, the OIG agent sent the claimant's case to the prosecutor with a warrant being issued [REDACTED]. (Department Exhibit 26)

(5) On February 14, 2006, the judge magistrate issued a judgment for the claimant to pay \$2,900 in victim restitution at \$120 per month beginning March 3, 2006 in addition to other court fees. (Department Exhibit 23)

(6) On August 28, 2009, the claimant applied for FAP benefits where the claimant was given a supplement of \$200 starting September 1, 2009.

(7) On September 29, 2009, the OIG agent sent the department recoupment specialist an investigation disposition report stating that the claimant had a 24-hour IPV disqualification with restitution of \$2,900. (Department Exhibit 17)

(8) On November 17, 2009, the recoupment specialist sent the claimant an intentional program violation notice that the claimant was disqualified for FAP benefits for 24 months where she would be ineligible from December 1, 2009 to November 30, 2011. The claimant's FAP benefits were cancelled effective November 30, 2009. The claimant has been found guilty by a court or the Administrative Hearing Judge for misrepresenting her circumstances or knowingly breaking a program rule. If you are not satisfied with the court's decision, you may

appeal the decision to Circuit Court. The overissuance occurred during the period of October 2004 through November 2004. (Department Exhibit 1-3)

(9) On November 30, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

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).

The department's manuals provide the following relevant policy statements and instructions for caseworkers:

INITIATING IPV

DISQUALIFICATION FIP, SDA and FAP Only

All IPV disqualifications must be served immediately. Begin the disqualification the first month after the notice is sent, unless the action is untimely. See Untimely Disqualification in this item.

If multiple IPV disqualifications occur in the same program, they are served concurrently or with overlapping periods. If other program disqualifications occur during an IPV period, they are served concurrently with the IPV disqualification.

IPV disqualification periods **cannot** be interrupted, **even if** the person becomes otherwise ineligible.

IPV disqualification from a program (e.g., FIP) is **not** counted when later determining the IPV disqualification period for a **different** program (e.g., FAP).

Disqualifications take precedence over penalties, therefore, disqualification resulting in penalties (benefit reductions) must be ended in order to impose IPV disqualifications.

Update IPV Sanctions to remove the disqualified member.

Standard of Promptness

FIP, SDA and FAP Only

Send the client a notice of disqualification (DHS-4357) within 10 days after the receipt of:

- The investigation disposition indicating IPV was determined.
- The hearing decision that IPV occurred.
- The signed DHS-826 or DHS-830.

Begin the disqualification the first month **after** the notice is sent.

Untimely Disqualification

FIP, SDA and FAP Only

When you discover a disqualification was **not** imposed according to the standard of promptness (above):

- Impose the disqualification for any remaining months.
- Recoup the benefits issued for the months the person should have been disqualified as an agency error.
- If the agency error amount is over \$500, notify the client of this OI via the DHS-4358A, B, C and D. See BAM 705.

In the instant case, the claimant was the recipient of FAP benefits that she applied for on August 28, 2009. The claimant had previously had two intentional program violations which would require her latest intentional program violation to a disqualification period of 24 months.

This Administrative Law Judge notes that the claimant was found guilty of an IPV in District Court and a judgment was issued against her where she was required to repay the department for the FAP and CDC benefits that she received that she was not entitled to that was signed on February 14, 2006. According to policy, IPV disqualifications must be served immediately. Under the standard of promptness of an IPV, the claimant was required to receive a notice of disqualification within 10 days after the receipt of the hearing decision that an IPV occurred. Therefore, the claimant should have received a notice within 10 days of February 14, 2006 which would be February 24, 2006. The subsequent 24 month second IPV disqualification would end on February 24, 2008.

Even though the claimant already had a previous one year IPV which required her to be disqualified from benefits for one year, department policy requires if multiple IPV disqualifications occur in the same program that they are served concurrently or with an overlapping period. In addition, if other program disqualifications occur during the IPV period, then they are served concurrently with the IPV disqualification. As a result, the claimant is eligible for FAP benefits because her IPV time period has passed.

Therefore, the department has not established that it was acting in compliance with department policy when it determined that the claimant was not eligible for FAP benefits because she had not served 24 month IPV.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not properly determine that the claimant was not eligible for FAP benefits as the result of a 24 month IPV.

Accordingly, the department's FAP action is **REVERSED**. The department is ordered to reinstate the claimant's FAP benefits retroactive to December 1, 2009, but the department is entitled to the recoupment of the IPV benefits.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 4, 2010

Date Mailed: March 4, 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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CGF/vmc

cc: 