

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: 2010-16559
Issue No: 3020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 2010
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 March 24, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to initiate a [REDACTED] recoupment action and a 12 month disqualification action on claimant's ongoing Food Assistance Program (FAP) case?

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 is a FAP recipient in [REDACTED].
- (2) On claimant's June 26, 2007 Assistance Application (DHS-1171), she acknowledged by signature she understood her responsibility to report all changes in income to

the department in a timely manner (e.g., starts/stops/increases/decreases)(Department Exhibit #1, pg 1).

(3) The department discovered by computer cross check claimant started a job on October 1, 2007 and stopped working at that job on December 21, 2007 (Department Exhibit #8, pgs 23 and 24).

(4) Claimant did not report any of this earned income to the department; consequently, the department did not take it into account when they calculated her December 2007 or January 2008 FAP benefit issuance amounts (Department Exhibit #9, pg 25).

(5) The department verified claimant received a paycheck on December 7, 2007 in the amount of [REDACTED] and another paycheck on December 21, 2007 in the amount of [REDACTED] (Department Exhibit #8, pg 24).

(6) When the department retroactively corrected claimant's December 2007 FAP budget after they discovered her unreported income they determined she was not eligible to receive any of the FAP benefits they issued to her in December 2007 ([REDACTED])(Department Exhibit #9, pgs 25 and 26-27).

(7) Likewise, the department verified claimant received her last paycheck from her former employer on January 4, 2008 in the amount of [REDACTED] (Department Exhibit #8, pg 24).

(8) Again, when the department retroactively corrected claimant's FAP budget for January 2008 they determined she was only eligible to receive [REDACTED] that month, instead of the [REDACTED] they issued her (Department Exhibit #9, pgs 25 and 28-29).

(9) When the department mailed claimant written notice of her total FAP overissuance amount ([REDACTED]), they also advised her that a 12 month disqualification from the

FAP program and recoupment/repayment would be initiated and would continue until the overissuance was paid in full (Department Exhibit #2, pgs 6 and 7).

(10) On November 23, 2009, claimant met with the department's Office of Inspector General agent (OIG) who thoroughly explained claimant's options to her, including the possibility that her case would be referred to the prosecutor's office for a fraud inquiry (Department Exhibit #1, pg 2).

(11) On that date, claimant signed an Intentional Program Violation (IPV) Repayment Agreement as well as Disqualification Consent Agreement agreeing to repay the total FAP amount overissued to her (██████████), and also, agreeing to a 12 month disqualification penalty from the FAP program (Department Exhibit #2, pgs 6 and 7; Department Exhibit #3, pg 8).

(12) The disqualification agreement states in relevant part:

...If you sign this Disqualification Consent Agreement, you will be disqualified from participating in the program shown even if you do not admit to the facts in your case (Department Exhibit #3, pg 8).

(13) Additionally, the Repayment Agreement states in relevant part:

...I am signing this agreement of my own free will and no threat, duress or coercion has been used to make me sign it (Department Exhibit #2, pg 7).

(14) When the department confirmed this agreement by written notice dated January 6, 2010, claimant filed a hearing request to dispute the issue, despite a written warning on the notice which states:

You agreed to this disqualification and/or repayment by signing an agreement to waive prosecution or an administrative disqualification hearing (Department Exhibit #6, pg 20).

(15) Additionally, this notice states:

A HEARING WILL BE GRANTED ONLY IF THE REASON FOR REQUESTING A HEARING IS AN INCORRECT COMPUTATION OF THE REDUCTION IN YOUR MONTHLY BENEFITS. If you disagree with the action for any other reason, you must appeal to the appropriate court (Department Exhibit #6, pg 21).

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).

Michigan law (MCL 400.43a) requires the department to take all necessary steps to recover an overpayment made to a public assistance recipient whether said overpayment occurs through intentional or unintentional actions (mistakes). However, in intentional overissuance cases, the department also is authorized to impose a one year disqualification period for the first violation, a two year disqualification period for the second violation and a lifetime disqualification for the third violation. BAM Item 720, pg 13.

Additionally, the applicable federal regulation states:

- (c) 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 (access device). 7 CFR 273.16(c).

The department's policy at BAM Item 720, pg 1 incorporates this IPV definition into its policy. Additionally, the department's policy conclusively states:

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

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

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

The facts of record in this case are clear. Claimant signed consent and repayment agreements on November 23, 2009, which constitute prima facie evidence she willingly, voluntarily and without duress agreed to the department's proposed FAP recoupment and disqualification actions, despite her protestations to the contrary at hearing. As such, no basis exists in fact, law or policy to reverse the department's proposed actions.

Furthermore, even if claimant had not signed these binding agreements, she would not prevail on her secondary argument that she did, in fact, timely report the disputed income because she has put forth absolutely no credible documentary evidence or corroborating testimony to support this allegation.

Lastly, claimant contends the department incorrectly calculated her FAP overissuance amount (██████0) and/or the monthly recoupment amount. Extensive calculations discussed at hearing, along with the department's submission of the disputed overissuance budgets, as well as this Administrative Law Judge's independent calculation of the alleged FAP overissuance amount prior to issuance of this Hearing Decision, lead this Administrative Law Judge to conclude all calculations were properly made. As such, the department's proposed actions (recoupment/disqualification) must stand.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly proposed to initiate a \$749.00 recoupment action and a 12 month disqualification action on claimant's ongoing FAP case.

Accordingly, the department's actions are AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 12, 2010

Date Mailed: May 12, 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.

MBM/db

cc:

A large black rectangular redaction box covering several lines of text in the 'cc:' field.