

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.: 2010-24403
Issue No.: 3020, 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 1, 2010
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on April 1, 2010. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS properly denied Food Assistance Program (FAP) benefits to Claimant, based on an intentional program violation (IPV)?

FINDINGS OF FACT

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

1. On February 24, 2005, the Family Independence Agency (FIA, now DHS) submitted a Fraud Investigation Request to the FIA Office of the Inspector

General (OIG), indicating that there was an overissuance to Claimant estimated at \$500.

2. On March 14, 2006, FIA issued an IPV Client Notice, Form FIA-4357, to Claimant. The Notice states that the overissuance amount for restitution purposes is \$2,503.
3. On or before February 9, 2010, Claimant applied for FAP benefits.
4. On or before March 2, 2010, DHS denied Claimant's FAP application for the reason that she was disqualified for life on March 14, 2006, pursuant to the IPV Client Notice.
5. On March 2, 2010, Claimant telephoned DHS and requested a hearing.

CONCLUSIONS OF LAW

FAP was established by the Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS' FAP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). These manuals are available online at www.mich.gov.

Pursuant to BEM 203, "FAP Trafficking," a person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. FAP trafficking violations are:

Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

The length of the disqualification period depends on the dollar amount of the FAP benefits trafficked. The standard disqualification period is applied to FAP trafficking convictions less than \$500. A person is disqualified for life for a FAP trafficking conviction of \$500 or more. The reader is then referred to the disqualification procedures in BAM 720. BEM 203, p. 2. (Bold print added for emphasis.).

BAM 720, “Intentional Program Violation,” states that courts may order nonstandard disqualification periods. If the court does not address disqualification in its order, the standard period applies. The standard disqualification period is used in all instances except when a **court** orders a different period. DHS must apply the court-ordered period. BAM 720, p. 13. (Bold print in original).

In addition, disqualification periods vary depending on the number of previous offenses: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.*

Also, DHS shall apply various disqualification periods when a recipient is convicted of four specific types of fraud by state and federal courts: two years for trading FAP to acquire illegal drugs and lifetime when the recipient has been convicted of trading FAP to acquire illegal drugs for a second time, trading FAP to acquire firearms, ammunition or explosives, or **trafficking FAP with a value of \$500 or more.** *Id.*, p. 14. (Bold print added for emphasis.)

I conclude that DHS failed to present a judge’s order from a court of law, to indicate that Claimant was convicted of a felony, the date or dates when the incident(s) occurred, and the amount of the alleged fraud. DHS also failed to document the amount of fraud they discovered in their own investigation. As there is no basis for selecting a penalty, DHS cannot now impose one.

I also conclude that a standard disqualification for a first-time offense does not apply in this case. BAM 720 has two different standard disqualification policies: first, that a first IPV disqualifies a recipient for one year; and, second, that trafficking FAP with a value of \$500 or more disqualifies a person for life. I conclude that DHS made no actual accounting of the overissuance in this case, and the estimate of \$500 is merely an estimate and is not sufficiently accurate to impose upon Claimant disqualification for life.

I further find that DHS has given no accounting or explanation of its second, higher alleged overissuance amount of \$2,503 and, for this reason, I cannot accept DHS' statement on a form notice as credible proof to establish the amount of the overissuance. I also find that the existence and disparity of the two overissuance numbers, the \$500 estimated in 2005 and then over \$2,000 just one year later in 2006, without any explanation is, in itself, not credible and causes me to conclude that the true amount of the issuance is unknown.

As DHS cannot establish that Claimant owes \$500, or \$2,503 but can only estimate the overissuance amount, I conclude that lifetime disqualification is a violation of DHS policy and procedure. I conclude the one-year penalty also cannot be imposed because there is no court order or factual basis for it. Even if the one-year penalty applied to Claimant, her maximum disqualification period would have expired on April 1, 2007, at the latest and, after that date, she qualifies for FAP benefits in accordance with DHS rules and policies.

Considering further whether Claimant is subject to a court-ordered, nonstandard disqualification, DHS has presented no court order to substantiate that a court has ordered a nonstandard, lifetime disqualification for Claimant. Accordingly, without a court order to that effect, I conclude that DHS may not impose a nonstandard disqualification on Claimant.

Based on my findings of fact above and on the DHS policies and procedures, I conclude that DHS failed to determine the exact dates and the amount of the overissuance and cannot, therefore, impose a standard penalty on Claimant. I conclude that DHS presented no basis by way of a court order for DHS to apply a nonstandard disqualification; therefore, a nonstandard disqualification is inappropriate.

I further conclude that Claimant's failure to request a hearing of the March 14, 2006, IPV Client Notice is not acquiescence or acceptance as to the amount of the money owed. The Notice states first, in Section 1 that Claimant is ineligible from April 1, 2006, indefinitely. Second, in Section IIB it states that if administrative recoupment is initiated, Claimant's food stamp benefits will be reduced to \$74 per month effective April 1, 2006. Reading further down the Notice form, it states in capital letters,

“A HEARING WILL BE GRANTED ONLY IF THE REASON FOR REQUESTING A HEARING IS AN INCORRECT COMPUTATION OF THE REDUCTION IN YOUR MONTHLY BENEFITS.”

Further down on the Notice it states,

“If you believe the disqualification/benefit reduction amount is incorrectly computed and wish to request a hearing, state your reasons below. Mail or bring this, signed and dated below, to the hearings coordinator at your local Family Independence Agency office.”

I conclude that, based on the findings of fact above and my examination of the Notice document, the Notice nowhere states that Claimant is disqualified for lifetime. Also, her right to challenge the disqualification amount is not articulated in the Notice provided to her. The Notice indicates she can challenge the disqualification itself and the amount of the reduction in her food stamp benefits but not the amount of the overissuance.

I also considered that DHS has not produced an acknowledgment of overissuance signed by Claimant, nor has it produced an agreement by Client to repay it. Such documents might prove the existence and amount of the overissuance. As they have not been provided, I cannot assume that Claimant has agreed of her own will to the existence and the amount of the debt.

For all of the above reasons, I conclude that DHS' action is erroneous and shall be REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS' denial of Claimant's FAP benefits is REVERSED. The Department is Ordered to initiate a redetermination of Claimant's eligibility for FAP benefits in accordance with applicable law and policy.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 13, 2010

Date Mailed: April 14, 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.

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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.

JL/pf

cc:

