

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.: 2010-30292
Issue No.: 3020, 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 9, 2010
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and the Order Granting Rehearing, May 19, 2010, Administrative Law Judge R. Craig. After due notice, a telephone rehearing was conducted from Detroit, Michigan, on June 9, 2010. Claimant did not appear at the rehearing. [REDACTED]

[REDACTED] appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether newly discovered evidence presented by DHS establishes that Claimant is permanently disqualified from receiving Food Assistance Program (FAP) benefits?

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 April 1, 2010, a hearing regarding the denial of FAP benefits to Claimant was held before the undersigned Administrative Law Judge. Based on the lack of evidence of a court order of criminal conviction, and the lack of evidence to show the violation dates and the amount of restitution, the Judge reversed DHS and ordered that Claimant's FAP application be processed.
2. On April 15, 2010, DHS requested a rehearing.
3. On May 19, 2010, based on newly discovered evidence, Administrative Law Judge Rhonda Craig granted DHS' request for a rehearing.
4. On June 9, 2010, after due notice to Claimant, a rehearing was conducted before the Administrative Law Judge. The following documents were admitted in evidence without objection: Order of Probation (Felony), and Intentional Program Violation Repayment Agreement. Department Exhibit 1, pp. 3-5.
5. Claimant was convicted of a felony on [REDACTED].
6. The time period of the Intentional Program Violation is November 1, 2003-December 31, 2004.
7. The restitution amount is \$2,503.

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/dhs-manuals.

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. A 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 disqualification procedures are set forth in BAM 720. BEM 203, p. 2. (Bold print added for emphasis.).

At the April 1, 2010, hearing in this matter, DHS failed to present a court order showing that Claimant was convicted of a felony, the date or dates when the incident(s) occurred, and the amount of the alleged fraud. At the June 9, 2010, rehearing, DHS presented new evidence in support of its position: the Order of Probation (Felony) of Judge Margie Braxton, Wayne County Circuit Court, dated [REDACTED]. The Order of Probation indicates that Claimant has been convicted of a felony and will serve three (3) years probation, with the amount of restitution to be determined. Department Exhibit 1, p. 3.

I conclude that the Order of Probation fulfills the BEM requirement that, in order to disqualify a Claimant for lifetime, DHS must produce a court order indicating the conviction occurred.

Based on the second new document, the IPV Repayment Agreement signed by Claimant on December 15, 2005, I conclude that the time period during which the IPV occurred and the fact that the amount is over \$500 have been established.

Based on the newly presented evidence, I conclude that the lifetime penalty is appropriate in this case. Based on my findings of fact above and on the DHS policies and procedures, I conclude that DHS has presented clear and convincing evidence that establishes Claimant's felony conviction, the dates of the violation, and that the amount of the overissuance is in excess of \$500.

For all of the above reasons, and, based on the newly discovered evidence, I conclude that DHS' denial of FAP benefits to Claimant is correct. My decision of April 1, 2010 shall be REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the April 1, 2010, administrative hearing decision is REVERSED based on newly discovered evidence. DHS' denial of FAP benefits to Claimant is affirmed. The Department need take no further action in this matter.



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

Date Signed: June 10, 2010

Date Mailed: June 10, 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.

2010-30292/JL

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.

JL/pf

cc:

