

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201046340

Issue No: 3055



Hearing Date: October 28, 2010

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon a request from the Department of Human Services (Department) to schedule a hearing for an alleged intentional program (IPV). Respondent did not appear at the hearing, which was held on Thursday, October 28, 2010, in Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the Respondent commit a Food Assistance Program (FAP) intentional program violation (IPV)?

FINDINGS OF FACT

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

1. The Respondent received FAP benefits from November 1, 2007, through February 28, 2008. Department Exhibit 20.
2. Respondent was aware of the responsibility to report all household employment and income to the Department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. Respondent was employed and received earnings during the period of September 4, 2007, through February 8, 2008. Department Exhibit 17 – 18.
4. Respondent did not fully report all employment and income to the Department.

5. Respondent failed to report income and earnings for the purposes of receiving benefits that respondent was not entitled to receive.
6. As a result, Respondent received overissuances in the amount of [REDACTED] under the FAP program. Department Exhibits 20 – 28.
7. This was Respondent's second intentional program violation.
8. A notice of the disqualification hearing was mailed to the Respondent's at the last known address, and it was returned by the [REDACTED] as undeliverable.
9. Prosecution of the Respondent was denied, and the case was referred for recoupment by the Department. Department Exhibit 4.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

When a customer client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700. A suspected intentional program violation means an overissuance where:

- the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- the client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

The Department suspects an intentional program violation when the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. BAM 720.

The Department's Office of Inspector General processes intentional program hearings for overissuances referred to them for investigation. The Office of Inspector General represents the Department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when

- benefit overissuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is [REDACTED] or more, or
 - the total overissuance amount is less than [REDACTED] and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program 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. BAM 720.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

This is the Respondent's second intentional program violation.

In this case, the Respondent signed an application for FAP benefits on June 26, 2007. Respondent's signature on this document certifies an awareness that fraudulent participation in FAP could result in criminal or civil or administrative claims. The Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill the requirements of the FAP program.

The Respondent received FAP benefits from November 1, 2007, through February 28, 2008. The Respondent was employed and received earnings from September 4, 2007, through February 8, 2008, and failed to report these earnings for the purposes of receiving benefits that Respondent was not entitled to receive. The Respondent received overissuances in the amount of [REDACTED] under the FAP program. The Department properly requested that the Respondent be disqualified from participation in the FAP program for two years.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record decides the following:

1. The Respondent committed a second intentional program violation of FAP.
2. The Department is entitled to recoup a FAP overissuance of [REDACTED].
3. The Respondent is ordered to reimburse the Department for the overissuance.
4. The Respondent is disqualified from participation in FAP for two years.

_____/s/_____
Kevin Scully
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: 1/20/11

Date Mailed: 1/20/11

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.

[REDACTED]