

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Registration No: 2010-47097
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 10, 2011
Kent County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and 1999 AC, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on August 10, 2011, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp. 9-10. The Department was represented by its Office of Inspector General (OIG).

ISSUE

In dispute was whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP), thereby receiving an overissuance of benefits that the Department is entitled to recoup.

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The agency further requested that Respondent be disqualified from receiving further program benefits for a period of one year.
2. Respondent signed an assistance application (DHS-1171) on June 13, 2005. She indicated no employment income on the application. (Department's Exhibit 2.)

3. By signing this application, Respondent acknowledged that she understood her failure to give timely, truthful, complete, and accurate information about her circumstances could result in a civil or criminal action, or an administrative claim, against her. (Department's Exhibit 2.)
4. From July 18, 2005, through September 14, 2005, Respondent was employed full time by Express Services, Inc. This income was not reported to the Department. (Department's Exhibits 1, 3; 8.)
5. On July 26, 2005, Respondent informed her Department caseworker that she was "currently . . . seeking work." (Department's Exhibit 5.)
6. Respondent submitted a second application for assistance on August 8, 2005. Again, she indicated no earned income from employment. (Department's Exhibit 6.)
7. By signing the second application, Respondent again acknowledged that she understood her failure to give timely, truthful, complete, and accurate information about her circumstances could result in a civil or criminal action, or an administrative claim, against her. (Department's Exhibit 2.)
8. Beginning September 19, 2005, through September 2006, Respondent was employed by Borisch ES, LLC. She did not report this income to the Department. (Department's Exhibits 1; 4; 8.)
9. Respondent continued to receive FAP benefits during the period September 1, 2005, through May 31, 2006, based on erroneous earned income information. (Department's Exhibits 1; 7; 8.)
10. As a result of Respondent's refusal or failure to properly report wages received from employment, she received an over issuance of FAP benefits for the period September 1, 2005, through May 31, 2006, in an amount totaling [REDACTED]. (Department's Exhibits 1; 7; 8.)
11. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to report all changes in circumstances to the Department within ten days of the change in her earned income, as required by agency policy.
12. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.
13. This was the first determined IPV committed by Respondent.

CONCLUSIONS OF LAW

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP for a period of one year.

As a preliminary matter, the notice of hearing in this case was returned by the United States Postal Service as undeliverable. When correspondence to a respondent is returned as undeliverable, or a new address cannot be determined, a hearing for IPV must be dismissed without prejudice. The exception is when the IPV pertains only to a FAP benefits case. Here, the only issue involved the overissuance of FAP benefits.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. A suspected IPV is defined as 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. [BAM 720, p. 1.]

An IPV is suspected by the Department when a client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p. 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p. 1.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p. 6. The amount of overissuance is

the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6.

Suspected IPV matters are investigated by the OIG. This office:

- Refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney.
- Refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS).
- Returns non-IPV cases back to the Department's recoupment specialist.

BAM 720, p. 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office.
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
 - The total OI amount for the FAP is [REDACTED] or more, or
 - The total OI amount is less than [REDACTED] and
 - The group has a previous IPV, or
 - The alleged IPV involves FAP trafficking, or
 - The alleged fraud involves concurrent receipt of assistance or
 - The alleged fraud is committed by a state/government employee.

BAM 720, p. 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p. 9.

When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time):

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV.

BAM 720, p. 13.

Further, IPVs involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p. 13.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p. 12.

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BEM 105, p. 7.

Here, the OIG provided credible and sufficient evidence that Respondent refused or failed to report earned income received by her from two separate employers between the period July 18, 2005, through May 31, 2006. The evidence established that Respondent was fully aware of her responsibility to timely report this earned income to the Department. BEM 720, p. 1. Moreover, Respondent's signature on two separate assistance applications established that she was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting her eligibility or benefit level could result in criminal, civil, or administrative action. Finally, there was no evidence presented indicating that Respondent suffered from any physical or mental impairment that limited her ability to understand and fulfill her reporting responsibilities. See BEM 720, p. 1.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Based on the credible testimony and other evidence presented, it is concluded that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an overissuance of FAP benefits between the period September 1, 2005, through May 31, 2006, in an amount totaling [REDACTED]. Further, because this is Respondent's first IPV, the one-year disqualification period is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by refusing or failing to report wages received from employment.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of her intentional program violation in the amount of [REDACTED].
- Respondent is personally disqualified from participation in the FAP for one year – the remainder of the group, if applicable, may continue to participate in the program to the extent eligible. The disqualification period will begin to run IMMEDIATELY as of the date of this order;

/s/ _____
Mark A. Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/19/11

Date Mailed: 8/19/11

NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which he / she resides within 30 days of receipt of this decision and order.

MAM/sc

cc: [REDACTED]