

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

IN THE MATTER OF:



Reg. No: 2010-49814

Issue No: 3020



Genesee County DHS-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on July 19, 2011. Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether Respondent received an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

1. The department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by Respondent as a result of Respondent having committed an Intentional Program Violation (IPV); the OIG also requested that Respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Application (DHS-1171) on October 20, 2005, acknowledging 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 Exhibits 7-14).
3. On September 15, 2006, Respondent completed her annual application, at which time the department discovered that Respondent had been working

at Bordine Nursery since March 17, 2006 and had not reported the income. (Hearing Summary).

4. On September 29, 2006, the department received a Verification of Employment showing Respondent was employed at Bordine Nursery from March 17, 2006 through September 13, 2006. This income was not reported to the department. (Department Exhibits 15-19).
5. Respondent received \$1,580.00 in FAP benefits during the alleged fraud period of May 2006 through September 2006. If the income had been properly reported and budgeted by the department, Respondent would only have been eligible to receive [REDACTED] in FAP benefits. (Department Exhibits 20-39).
6. Respondent failed to report her income in a timely manner, resulting in a FAP overissuance for the months of May 2006 through September 2006, in the amount of \$1,375.00. (Department Exhibit 20-39).
7. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
8. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
9. Respondent had not committed any previous intentional program violations of the FAP program. (Department Hearing Request).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that the respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers.

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 \$1000 or more, or
 - the total overissuance amount is less than \$1000, 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.

In this case, the department has established that Respondent was aware of the responsibility to report all income and employment to the department. Respondent completed an application for assistance on October 20, 2005 and reported she was unemployed. On September 15, 2006, the department discovered Respondent had been working at Bordine Nursery when she completed her annual application and reported she had been employed from March 17, 2006, until September 13, 2006 when she was laid off. The Verification of Employment from Brodine Nursery verified Respondent had been working there from March 17, 2006 through September 13, 2006. The department alleges Respondent failed to timely report this income.

Respondent credibly testified that she had reported her employment with Bordine Nursery to the department. Respondent stated that she had called her worker when she was hired and her worker sent her an employment verification which she completed and returned.

The department representative explained that it initially was proceeding against Respondent for two FAP Intentional Program Violations, until Respondent appeared for the pre-hearing interview and at her insistence; the department rechecked the file and found the second verification of employment. As a result of locating the verification of employment, the department did not proceed with the January 2007 through March, 2007 IPV against her. After further testimony, the department conceded that it was possible, based on Respondent's testimony, and the finding of the second verification of employment in the file, that Respondent had turned in the first verification of employment and it had been misplaced.

This Administrative Law Judge therefore concludes that the department has not shown through clear and convincing evidence that Respondent committed an intentional program violation. However, the evidence does show Respondent received an overissuance of ██████████ from May 2006 through September 2006, which Respondent does not deny. Consequently, the department's request for full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent received an overissuance of \$1,375.00 in FAP benefits for the period of time from May 2006 through September 2006.

Therefore, it is ordered that the department is entitled to recoup the overissuance of benefits Respondent ineligibly received.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/27/11

Date Mailed: 7/27/11

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

VLA/ds

