

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201054537
Issue No: 3055
Case No: [REDACTED]
Hearing Date: June 27, 2011
Delta County DHS

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for an Intentional Program Violation (IPV) and disqualification hearing. After due notice, a hearing was held on June 27, 2011. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Whether respondent committed an IPV on 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. 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 IPV; the OIG also requested that respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Application (1171) on June 26, 2006, July 14, 2006, and December 1, 2006, acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him (Department Exhibit 1, pages 7-26)

3. On the Assistance Applications, the respondent reported a wife, 2 children and himself as part of the household. (Department Exhibit 1, pages 7-26).
4. The respondent completed an Assistance Application on June 22, 2007, listing his wife, one child and himself as household members. (Department Exhibit 1, pages 30-46)
5. Respondent reported that he intended to stay in Michigan on the application. (Department Exhibit 1, pages 30-46)
6. The respondent made all EBT FAP purchases in the State of Michigan. (Department Exhibit 1 pages 50-54)
7. On June 22, 2007, the respondent reported to the department that he and his wife were in Florida for the winter. He indicated that his wife was still in Florida. (Department Exhibit 1, page 1)
8. The OIG indicates that the time period they are considering the fraud period is February 1, 2007, through May 31, 2007. (Department Hearing Summary)
9. During the alleged fraud period, the respondent was issued [REDACTED] in FAP benefits from the State of Michigan (Department Exhibit 1 page 57).
10. Respondent was clearly instructed and fully aware of his responsibility to report any changes in residency to the department.
11. Respondent was physically and mentally capable of performing his reporting responsibilities.
12. Respondent has not committed any previous intentional FAP program violations.

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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case, the department has requested a hearing to establish an overissuance of benefits as a result of an IPV of the FAP. The department has asked that 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 overissuance 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 overissuance 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. This is the respondent's first intentional program violation.

In this case, the department has established that respondent was aware of the responsibility to report any changes in circumstances that might affect eligibility for services. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent received FAP benefits from March 2007 through May 2007 from the State of Michigan while the Respondent and his wife were in Florida. The Department is alleging that the Respondent committed an Intentional Program Violation when he and members of his household changed their residency without reporting to the Department.

Department policy indicates that clients must report all changes that could potentially affect eligibility or benefits amount within ten days of when the client is aware of the change. BAM, item 507, p. 7. This would include any change in residency. Department policy indicates that a resident is a person living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM, item 220, p. 1. The respondent was a resident of Michigan. He temporarily went to Florida with his wife. They went to Florida for the winter. The Application for Assistance stated "list yourself and then all other persons who live in the home or are temporarily absent from your home. (Department Exhibit 1, pg 41). The respondent reported that his household consisted of himself, his wife and his son. He verbally informed the worker that his wife was temporarily absent as she was still in Florida. In June, he reported that his daughter April had moved out of the home. Although the department indicates on page 5 that they don't know when April, the daughter, moved out of the home, they are requesting a finding that she was not in the home beginning in February 2007. There is no evidence to support this finding.

Although the respondent was temporarily in Florida, there is nothing in the record to indicate that he intended to change his residency. In fact, all purchases made on the EBT during this time were in fact in Michigan.

The department has not established by clear and convincing evidence that the respondent committed an Intentional Program Violation. There is some evidence that there may have been an overissuance. The department has not established the actual time frame or the actual overissuance. The department acknowledges that they do not know when the daughter moved out to determine if the respondent reported timely. The Respondent reported "winter" as the time frame they were in Florida. The department is alleging the violation was from February to May with no explanation as to why it is these months. The department is advised that they may pursue this matter as a debt establishment.

DECISION AND ORDER

The Administrative Law Judge finds that the department has not established an IPV. Although the department has not established an overissuance at this time, there is

sufficient reason to believe that an overissuance may have occurred. The department may pursue this matter as a debt establishment.

/s/
Kandra Robbins
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 28, 2011

Date Mailed: June 28, 2011

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.

KR/ar

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